Office - Supreme Court, U.S.
FILED
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ALEXANDER L. STEVAS

No. 80-2015

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

ASARCO INCORPORATED (formerly THE AMERICAN SMELTING AND REFINING COMPANY),
Appellant,

v.

IDAHO STATE TAX COMMISSION,
Appellee.

Appeal from the Supreme Court of Idaho

JOINT APPENDIX

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Appeal Docketed May 29, 1981

Probable Jurisdiction Noted October 5, 1981

TABLE OF CONTENTS

Page

Relevant Docket Entries for the proceedings in the District Court of the Fourth Judicial District of Idaho 1a

Relevant Docket Entries for the proceedings in the Idaho Supreme Court 3a

Complaint (filed July 25, 1974) 11a

Answer (filed August 26, 1974) 13a

Pre-trial Order (filed January 30, 1975) 16a

Stipulation (filed January 30, 1975) 26a

Attachments to the Stipulation:

Notice of Deficiency Determination 55a

MTC Audit Report 83a

Appellant's Idaho Corporation Income Tax Return (1969) 105a

Appellant's Idaho Corporation Income Tax Return (1970) 113a

Transcript of Proceedings in the District Court of the Fourth Judicial District of Idaho 121a

Order of Supreme Court of the United States Noting Probable Jurisdiction 139a

RELEVANT DOCKET ENTRIES

REGISTER OF ACTIONS
DISTRICT COURT
ADA COUNTY, IDAHO

Case No. 53182

AMERICAN SMELTING AND REFINING CO., *Plaintiff*

IDAHO STATE TAX COMMISSION, *Defendant*

Date Filed Mo., Day, Yr.	Papers Filed, Issued or Lodged
July 25 1974	Complaint filed, Summons issued
July 25 1974	Surety Bond
Aug. 7 1974	Summons and affidavit of service
Aug. 15 1974	Notice of Appearance
Aug. 26 1974	Answer
Aug. 26 1974	Note of Issue—Court
Jan. 30 1975	Stipulation
Jan. 30 1975	Pre-trial Order and Acceptance
Sept. 30 1975	Order for hearing
Nov. 13 1975	Memorandum
Nov. 13 1975	Certificate of mailing
Jan. 15 1976	Findings and conclusions
Jan. 22 1976	Judgment
Mar. 11 1976	Notice of Appeal
Mar. 15 1976	Praecipe
Mar. 18 1976	Clerk's Certificate of Estimated Costs

Date Filed

Mo., Day, Yr. Papers Filed, Issued or Lodged

Mar. 12 1979—Supreme Court Opinion reversing & remanding

Apr. 10 1979—Remittitur

May 24 1979—Notice of Appeal to U. S. Supreme Court

May 24 1979—Certificate of Service

May 30 1979—Amended Notice of Appeal to the Supreme Court of the United States

May 30 1979—Certificate of Service

Mar. 5 1981—Supreme Court Opinion Reinstating Prior Opinion

Mar. 27—Remittitur

May 18 1981—Notice of Appeal to the U. S. Supreme Court

IDAHO SUPREME COURT

Docket No. 12198 S

AMERICAN SMELTING AND REFINING COMPANY,
Plaintiff-Respondent,

v.

IDAHO STATE TAX COMMISSION,
Defendant-Appellant.

Date	Register-of-Actions	203 Entries

03/12/76—Filed Notice of Appeal. NC & C.

03/19/76—Filed Clerk's Certificate. NC & C.

04/09/76—Filed Reporter's Transcript (1 Vol). NC & C.

04/09/76—Filed Clerk's Record (1 Vol).

04/09/76—Received Exhibits **large envelope**

04/30/76—Filed Stip. re Extens. of Time to 6-10-76 to File App. Brief.

04/30/76—Entered Order Approving Stipulation Filed 4-30-76. NC.

06/14/76—Filed Stip. and Order re Extens. of Time to 7-23-76 to File App. Brief.

07/22/76—Filed Appellant's Brief. CM. NC.

08/13/76—Filed Petition to Appear as Amicus Curiae by Eberle, Berlin, Kading, Turnbow & Gillespie on Behalf of United States Steel Corp. for the Purpose of Submitting Additional Authorities, Oral Argument and Theories.

08/16/76—Entered Order Granting Petition Filed 8-13-76 with Brief to be Filed Within 30 Days. NC.

Date Register-of-Actions

09/28/76—Filed Stip. re Extens. of Time of 30 Days (10-18-76) to File Amicus Curiae Brief; 10-28-76 to File Res. Brief; and Until 11-22-76 to File App. Reply Brief.

09/28/76—Entered Order Approving Stipulation Filed 9-28-76. NC.

10/21/76—Filed Amicus Curiae Brief (United States Steel Corp.). CM. NC.

10/29/76—Filed Respondent's Brief. CM. NC.

11/12/76—Filed Stip. re Extens. of Time to 1-6-77 to File App. Reply Brief. CM.

11/15/76—Entered Order Approving Stipulation Filed 11-12-76 to "12-13-76 only". NC.

11/23/76—Filed Motion to Appear as Amicus Curiae by Multistate Tax Commission for Purposes of Filing a Brief. CM. NC.

12/01/76—Filed Stip. re Extens. of Time to 1-6-77 to File App. Reply Brief.

12/01/76—Entered Order Approving Stipulation Filed 12-1-76. NC.

12/09/76—Entered Order Granting Motion Filed 11-23-76 Amicus Curiae Brief (Multistate) Due 1-1-77. NC.

12/27/76—Filed Amicus Curiae Brief (Multistate Tax Commission). CM. NC.

01/05/77—Filed Appellant's Reply Brief. CM. NC.

01/21/77—Filed Motion by Res. to File Brief in Response to Brief of Amicus Curiae, Multistate Tax Commission. CM. NC.

Date Register-of-Actions

01/28/77—Entered Order Granting Motion Filed 1-21-77. NC.

03/17/77—Filed Res. Reply Brief to Brief of Amicus Curiae Multistate Tax Commission. CM. NC.

11/02/77—Entered Order Setting Case for Hearing on the Merits 9 a.m., Dec. 5, 1977. In Boise.

11/10/77—Filed Motion by App. for Enlargement of Time for Oral Argument of 60 Minutes per Side and Permitting all Amicus Curiae to Participate in Oral Argument. CM. NC.

11/18/77—Entered Order Granting Motion Filed 11-10-77 to 45 Minutes per Side for Oral Argument and any Amicus Curiae Argument Must Constitute a Part of the 45 Minutes Allotted to Each Side. NC.

11/22/77—Filed Motion by App. to Allow Appearance of William D. Dexter, Attorney for Multistate Tax Commission, Amicus Curiae, in This Appeal, for Purposes of Oral Argument. CM. NC.

11/28/77—Filed Motion by Res. to Allow Appearance of George Beatty, Attorney of WN., D.C., for Limited Purposes of Oral Argument on Behalf of Res. CM. NC.

11/28/77—Entered Order Granting Motion Filed 11-22-77. NC. Dist.

11/28/77—Entered Order Granting Motion Filed 11-28-77. NC. Dist.

12/08/77—File Letter from App. Citing Certain Cases as Requested by the Court During Oral Argument. NC. Dist.

12/05/77—Mr. Peterson Moved Admission of George Beatty, a Member in Good Standing in the State Bar

Date Register-of-Actions

of Michigan, for the Purposes of Making Oral Argument in This Case. Motion Granted.

12/05/77—Entered Order—This Case Being Fully Argued, a Written Opinion Will Issue in Due Time.

03/12/79—Filed Case Opinion. NC, J, Judge Callister & C.

04/03/79—Filed Remittitur Reversing and Remanding Judgment for Further Proceedings as Set Forth in Opinion. NC, J & C.

04/03/79—Returned Exhibits w/Remittitur. Via Statehouse Mail.

04/03/79—Released to West Publishing.

05/23/79—Filed Notice of Writ of Certiorai by Res. CM. NC. Dist.

05/30/79—Filed Amended Notice of Writ of Certiorai by Res. w/Attachment. CM. NC. Dist.

03/28/80—Received Letter from Theodore V. Spangler, Dep. Atty. Gen. for the State Tax Commission, Stating He Has Received Information That the U. S. Supreme Court Has Vacated the Idaho Court's Judgment and Remanded the Case to the Idaho Court for Further Consideration in Light of *Mobil Oil Corporation v. Commissioner of Taxes of Vermont* (Docket No. 78-1201, Decided 3-19-80). Dist.

04/02/80—Received Letter from Philip E. Peterson, Counsel for Res., re U. S. Supreme Court Ruling and Suggesting That the Case Should be Briefed and Argued Before This Court. (w/Attached Copy of U.S. Supreme Court Decision). Dist.

04/28/80—Filed Order of U. S. Supreme Court Remanding Cause in Light of *Mobil Oil Corporation v.*

Date Register-of-Actions

Commissioner of Taxes of Vermont, 445 U.S. —— (1980). NC. Dist.

05/02/80—Entered Order This Case Having Been Remanded by the Supreme Court of the United States to the Idaho Supreme Court on the 24th Day of March, 1980, for Further Consideration in Light of *Mobil Oil Corp. v. Commissioner of Taxes of Vermont,* 445 U.S. (1980), It Is the Order of the Idaho Supreme Court That the Parties Hereto Shall Each, in Accordance with Rule 34 of the Idaho Appellate Rules, Submit Briefs to This Court Addressing the Necessity for Further Action of This Court. NC.

05/23/80—Filed Stipulation as to Briefing in That App. Brief Would Be Filed on or Before 8-6-80; Res. Brief on or Before 9-16-80; and App. Reply Brief on or Before 10-1-80.

05/27/80—Entered Order Approving Stipulation Filed 5-23-80. NC. Distributed.

05/27/80—Set *due date*—Res. Opening Brief on Remand 8-6-80.

05/27/80—Set *due date*—App. Brief on Remand 9-16-80.

05/27/80—Set *due date*—Res. Reply Brief on Remand 10-1-80.

07/11/80—Filed Motion for Extens. of Time to 10-01-80 to File Resp. Opening Brief on Remand. NC.

07/30/80—Entered Order Granting Motion Filed 7-11-80. NC.

07/30/80—Reset *due date*—Res. Opening Brief on Remand Due 10-1-80.

Date Register-of-Actions

07/30/80—Reset *due date*—App. Brief on Remand Due 11-12-80.

07/30/80—Reset *due date*—Res. Reply Brief on Remand Due 11-26-80.

07/30/80—Filed Affidavit in Support of Motion for Ext. of Time Filed on 7-11-80. CM. NC.

10/06/80—Filed Respondent's Opening Brief on Remand. CM. NC. Dist.

10/21/80—Filed Stip. Motion re Extens. of Time to 12-5-80 to File App. Brief on Remand.

10/24/80—Entered Order Granting Motion Filed 10-21-80. NC.

11/14/80—Filed Motion to Appear as Amicus Curiae by Multistate Tax Commission for Leave to Appear on Its Own Behalf and on Behalf of the States Joining in the Brief of the Multistate Tax Commission for the Purpose of Filing a Brief. CM. NC.

12/04/80—Filed Appellant's Brief on Remand. CM. NC. Dist. Lodged Amicus Curiae Brief (Multistate Tax Commission) on Remand. CM.

12/04/80—Set *due date*—Res. Reply Brief on Remand 12-26-80.

12/08/80—Filed Notice of Motion to Leave to File Brief of Amicus Curiae State of Illinois. CM. NC.

12/08/80—Filed Motion to Appear as Amicus Curiae by State of Illinois Department of Revenue, by Its Attorney, Tyrone Fahner, Attorney General of Illinois. CM. NC.

12/10/80—Filed Motion for Assoc. of Foreign Counsel of (1) William D. Dexter, General Counsel, Multi-

Date Register-of-Actions

state Tax Commission, 204 Custer Way, Olympia WA 98501, as Amicus Curiae for the Multistate Tax Commission and the States Participating With the Multistate Tax Commission in Its Amicus Brief; and (2) Tyrone Fahner, Attorney General of the State of Illinois, 160 N. La Salle St., Chicago, Illinois 60601, and Fred H. Montgomery and Frederick J. Czerwionka, as Amicus Curiae for the State of Illinois. CM. NC.

12/10/80—Entered Order Setting Case for Hearing on the Merits—and Remand at 9:00 a.m., Jan. 12, 1981 in Boise. NC.

12/22/80—Entered Order Granting Motion Filed 11-14-80 re Motion to File Amicus Curiae Brief by Multistate Tax Commission. NC.

12/23/80—Entered Order Granting Motion Filed 12-10-80 re Motion to Associate Foreign Counsel. (Dexter & Fahner to Appear as Amicus Curiae). NC.

12/23/80—Entered Order Granting Motion Filed 12-8-80 re Motion for Leave to File Brief of Amicus Curiae by the State of Illinois. NC.

12/29/80—Entered Order Vacating Order Setting Case for Hearing on the Merits & Remand at 9:00 a.m., Jan. 12, 1981 & Resetting Case for Hearing at 10:30 a.m., Jan. 12, 1981 NC.

12/30/80—Filed Respondent's Reply Brief on Remand. CM. NC. Dist.

12/23/80—Filed Amicus Curiae (Multistate Tax) Brief. CM. NC. Dist.

12/23/80—Filed Amicus Curiae (State of Illinois) Brief. CM. NC. Dist.

Date Register-of-Actions

01/12/81—The App. Moved for Admission of George Beatty (D.C.) for the Purpose of Making Oral Argument. No Objection. So Ordered. The Respondent Moved for Admission of William D. Dexter (Washington) for the Purpose of Making Oral Argument. No Objection. So Ordered. The Cause Was Argued on Remand from the U.S. Supreme Court by George Beatty, Wash. D.C. and Philip E. Peterson for Appellant and by Theodore V. Spangler, Dep. Atty. Gen. and William D. Dexter, Tumwater, WA. for Respondent.

01/12/81—Entered Order—This Case Being Fully Argued, a Written Opinion Will Issue in Due Time.

02/02/81—Received Letter from Counsel for App. with Attached Recent Decision of the New Mexico Supreme Court. CM. NC. Dist.

03/04/81—Filed Case Opinion. NC, J & C.

03/04/81—Appeal Description ** on Remand from the U. S. Supreme Court. Prior Opinion & Order of This Court Are *Reinstated*

03/26/81—Filed Remittitur. NC, J, C & J. Callister.

03/26/81—Released to West Publishing.

05/18/81—Filed Notice of Appeal to the Supreme Court of the United States by American Smelting. CM. NC. Dist.

10/09/81—Filed Order from U. S. Supreme Court, Dated 10-5-81, That in This Case Probable Judrisdiction Is Noted. The Case Is Set for Oral Argument in Tandem with Case No. 80-1745, *F. W. Woolworth Co. v. Taxation and Revenue Department of New Mexico*. NC. Dist.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Case No. 53182

AMERICAN SMELTING AND REFINING COMPANY,
Plaintiff,

vs.

IDAHO STATE TAX COMMISSION,
Defendant.

COMPLAINT

[filed July 25, 1974]

COMES Now the plaintiff, American Smelting and Refining Company, and for claim for relief against the defendant, alleges as follows:

1. The plaintiff, American Smelting and Refining Company, is a corporation duly authorized to do business in the State of Idaho.

2. Defendant, Idaho State Tax Commission, has improperly determined income tax deficiencies and interests against the plaintiff for the years and in the amounts as follows:

Year	Deficiency	Interest	Total
1968	$ 92,471.88	$28,897.46	$121,369.34
1969	136,485.00	28,101.34	139,393.78
1970	129,740.76	23,437.02	145,187.78

3. The deficiencies and interests set out in 2. above were the result of an improper apportionment to the State of Idaho of income plaintiff derived from dividends, interest, patent royalties and capital gains subject to tax by the

State of New York, the commercial domicile of the plaintiff.

4. That the improper apportionment set out above is contrary to the provision of Idaho Code Section 63-3027 and related sections, the Constitution of the State of Idaho, Article I, Section 13, the due process clause of the United States Constitution, Article IV, section 1, and the commerce clause of the United States Constitution, Article I, Section 8.

5. Plaintiff brings this action pursuant to provisions of Idaho Code Section 63-3049, permitting judicial examination of determinations by the defendant.

6. A bond in the amount of $817,259.98, double the amount of the determination by the Idaho State Tax Commission from which this appeal is taken, has been filed with this Court.

WHEREFORE plaintiff prays that the determination of the Idaho State Tax Commission be set aside and for such other and further relief as to the Court may seem just in the premises.

DATED this 25th day of July, 1974.

CLEMONS, COSHO, HUMPHREY & SAMUELSEN

/s/ R. MICHAEL SOUTHCOMBE
R. Michael Southcombe

/s/ PHILIP E. PETERSON
Philip E. Peterson
Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Case No. 53182

AMERICAN SMELTING AND REFINING COMPANY,
Plaintiff,

-vs-

IDAHO STATE TAX COMMISSION,
Defendant.

ANSWER

[filed August 26, 1974]

COMES Now Defendant Idaho State Tax Commission and in response to Plaintiff's Complaint herein states and alleges as follows:

I.

Defendant denies each and every allegation, statement of fact and conclusion of law contained in Plaintiff's Complaint not specifically admitted herein.

II.

Defendant admits the allegations in Paragraph 1 of Plaintiff's Complaint.

III.

In response to Paragraph 2 of Plaintiff's Complaint, Defendant admits that Defendant determined income tax deficiencies and interest against the Plaintiff for the years and in the amounts alleged in Plaintiff's Complaint but Defendant denies that such determinations were made improperly.

IV.

In response to Paragraph 3 of Plaintiff's Complaint, Defendant admits that certain income derived by the Plaintiff from dividends, interest, patent royalties and capital gains was determined by the Defendant to be income includible in Plaintiff's total business income subject to apportionment. Defendant further admits that the State of New York is the commercial domicile of the Plaintiff. Defendant denies each and every other allegation, statement of fact and conclusion of law contained in Paragraph 3 of Plaintiff's Complaint.

V.

Defendant denies each and every allegation, statement of fact and conclusion of law contained in Paragraph 4 of Plaintiff's Complaint.

VI.

Defendant admits the allegations of Paragraphs 5 and 6 of Plaintiff's Complaint.

WHEREFORE, Defendant prays that Plaintiff's Complaint be dismissed and held for nought.

DATED this 23 day of August, 1974.

ATTORNEY FOR DEFENDANT
/S/ THEODORE V. SPANGLER, JR.
Theodore V. Spangler, Jr.
Assistant Attorney General

I hereby certify that I have on this 23rd day of August, 1974, served a copy of the within and foregoing ANSWER by sending the same by United States mail, postage prepaid, in an envelope addressed to R. Michael Southcombe, Attorney of the firm Clemons, Cosho, Humphrey & Samuelsen, 1110 Bank of Idaho Bldg., Boise, Id. 83702 and to Philip E. Peterson, Attorney at Law, 318 5th St., Lewiston, Id. 83501.

/s/ THEODORE V. SPANGLER, JR.
Theodore V. Spangler, Jr.
Assistant Attorney General

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Case No. 53182

AMERICAN SMELTING AND REFINING COMPANY,
Plaintiff,

vs.

IDAHO STATE TAX COMMISSION,
Defendant.

PRE-TRIAL ORDER

[filed January 30, 1975]

The parties to this action, by and through their respective counsel, Phillip E. Peterson and R. Michael Southcombe, attorneys for plaintiff, and Theodore E. Spangler, attorney for defendant, met with the Court on the 29th day of January, 1975, for the purpose of complying with Rule 16, I.R.C.P. and for the preparation of this Order.

The parties, prior to the pre-trial conference, agreed as to a proposed order and subsequent to the conference, the Court, having no substantial alterations, entered the proposed Order as the Pre-Trial Order.

1. The parties have produced for examination by each other all exhibits contemplated to be necessary for trial and required to be produced at a pre-trial conference and such exhibits are attached to this Order as Exhibits 1 and 2 of the stipulation which is incorporated herein an Annex 1 to the Pre-Trial Order.

2. It is apparent from the record and discussions with counsel that good faith settlement discussions were unsuccessful and the contentions of the parties are such that there is no possibility of any settlement.

3. There are no requests for further discovery.

4. There is no continuing discovery requiring supplemental answers.

5. This is a non-jury trial, estimated for three days, to commence on the 5th day of February, 1975.

6. The plaintiff is contesting the determination by the defendant of income tax deficiencies and interest against plaintiff for the tax years 1968, 1969 and 1970.

7. The taxpayer is involved in mining, smelting and refining non-ferrous metals in various states. It has interests in several corporations, most of which are engaged in mining operations either in the United States or in foreign countries. The taxpayer's stock interest in these corporations ranges from ownership of an infinitesimal interest to 100% ownership. In 1967, taxpayer was forced by the State Tax Commission to abandon its method of reporting income to Idaho by separate accounting and to utilize the apportionment method. For the years involved, 1968, 1969 and 1970 six corporations, the entire stock of which was owned by the taxpayer, have been unitized (the income and expenses consolidated) with the taxpayer by the State Tax Commission. In addition to this, all income in the form of dividends from all other corporations in which taxpayer owns an interest, and all interest, capital gains and royalties have been treated as "business income" and apportioned by the State Tax Commission.

Multi-state corporations have income from many states. The laws of the State of Idaho provide that a certain part of that income is to be apportioned to Idaho for tax purposes. That certain part is defined in the statute as "business income." Apportionment of that "business income" is accomplished by application of a three-factor formula, which consists of sales, property and payroll. The statute provides that the sales of the corporation in Idaho is to be the numerator of a fraction of which the denominator is the sales of the corporation everywhere. Similarly, the prop-

erty and payroll of the corporation in Idaho are to be numerators of fractions of which the property and payroll of the corporation everywhere are denominators, respectively. The average of these three fractions is multiplied by the total "business income" of the corporation to determine the portion of the income of the corporation taxable by Idaho.

In this particular case, six corporations which are 100% owned by the taxpayer have been unitized by the State Tax Commission, that is, essentially consolidated with the taxpayer. The payroll, property and sales of these corporations are included in the denominators; the payroll, property and sales of all other corporations in which taxpayer has an interest are excluded from the denominator.

"Business income" includes "income from the acquisition, management, or disposition of tangible and intangible property when such acquisition, management, or disposition constitutes integral or necessary parts of the taxpayer's trade or business operations." Gains or losses and dividend and interest income from stock or securities of any foreign or domestic corporation are presumed to be "income from intangible property, the acquisition, management, or disposition of which constitute an integral part of the taxpayer's trade or business." This presumption must be overcome by clear and convincing evidence. Plaintiff contends that in this case the dividend, interest, capital gains, and royalty income are not business income; defendant contends that they are.

Non-business income is not divided. It is allocated, that is, taxed by the single jurisdiction which is the source of the income. Income from intangibles is allocated to and subject to tax in the state of commercial domicile.

8. The claim of the parties are as follows:

A. Plaintiff:

(1) The statutory presumption that capital gains, dividend and interest income is "an integral

part of taxpayer's trade or business" will be overcome by clear and convincing evidence.

(2) "Business Income" as used in the statute is "operating income" and does not include income received by taxpayer in the form of dividends, interest, capital gains and royalties.

(3) Due Process and fair treatment of interstate commerce require that a state show a reasonable connection between the business activity sought to be taxed and the tax imposed. The state has the burden of proof on this issue and cannot establish the connection between business activity and taxpayer income sought to be taxed by the State in this case.

(4) The income of the taxpayer from Idaho operations can be and is determined in the normal course of business with reasonable certainty.

(5) It was improper to unitize the six corporations with ASARCO.

(6) Idaho is not the domicile or commercial domicile of taxpayer and lacks the power to tax income derived from sources outside the United States by the taxpayer.

(7) It is a denial of due process and an unfair burden on interstate commerce to apportion income produced by corporations in which taxpayer has an interest without allowing inclusion of the property, payroll and sales of these corporations in the denominator of the apportionment formula.

B. Defendant:

(1) Income from capital gains, dividends and interest is "business income" arising from the ac-

quisition, management or disposition of tangible and intangible property constituting an integral and necessary part of the taxpayer's trade or business, unless demonstrated to the contrary by clear and convincing evidence. The facts cannot sustain that burden of proof.

(2) The three factor apportionment formula provided in Idaho Code § 63-3027 apportions to the state of Idaho an amount of taxable income which is reasonably related to the extent of the taxpayer's activities in Idaho.

(3) In order to escape formulary apportionment the taxpayer has the burden of establishing by clear and cogent evidence that the result of the formula is so arbitrarily disproportionate to the extent of the taxpayer's activities within the state as to be an unconstitutional burden upon interstate commerce.

(4) The six subsidiary corporations combined by the State Tax Commission are part of a unitary business enterprise.

(5) Dividend income received from non-unitized subsidiaries and other corporations is not assessed against the corporation that paid the dividends or against the property of such corporations and therefore the inclusion of property, payroll and sales of the dividend paying corporation in the apportionment factor is not required.

9. The parties have stipulated to certain facts as set out in Annex 1 to this Order.

10. A. No issue of law has been abandoned by either party.

B. The complaint is amended in paragraph 4 thereof by inserting Amendment 14, Section 1 of the United States Constitution in lieu of Article IV, Section 1.

11. The issues of fact unresolved are:

A. What is the extent of taxpayer's Idaho business activity?

B. Can the corporations involved act and operate independently of ASARCO?

C. Do the corporations involved act and operate independently of ASARCO?

D. Is the sales factor in the apportionment formula properly computed?

E. Are dividends, capital gains, interest and royalties in this case integral or necessary parts of the taxpayer's trade or business operation?

F. If these items are "integral or necessary parts of the taxpayer's trade or business operation", is there a sufficient connection between taxpayer's Idaho activity and operations by other corporations in which taxpayer has an interest and from which it receives income in the form of dividends?

12. The issues of law unresolved are:

A. Are all or any of the six corporations properly unitized with the taxpayer?

B. Are:

(1) the dividends from:
(a) Federated Metals of Canada
(b) ASARCO Mercantile Company
(c) Enthone, Inc.
(d) Int'l. Metal Co.
(e) Lone Star Lead Const. Corp.

(f) No. Peru Mining Corp.
(g) ASARCO Australia
(h) [ASARCO] Developments
(i) ASARCO Exploration Company
(j) Compania American Smelting, S.A.
(k) Lake Asbestos of Quebec
(l) ASARCO Int'l. Corp.
(m) So. Peru Copper Corp.
(n) So. Peru Copper Sales Corp.
(o) M.I.M. Holdings, Ltd.
(p) Neptune Gold Mining Company
(q) ASARCO Mexicana, S.A.
(r) General Cable
(s) Revere Copper
(t) Hecla Mining Co.
(u) Kennecott Copper
(v) Phelps Dodge
(w) United Park City Mines
(x) Mexicana de Cobre, S.A.;

or

(2) capital gains from sale of General Cable stock; or

(3) capital gains, interest and royalty income "integral or necessary parts of the taxpayer's trade or business operations" in this case?

C. If the items as a whole or separately are an integral part of taxpayer's trade or business operations, is there a sufficient connection between the income earned in the form of:

(1) the dividends from:

(a) Federated Metals of Canada
(b) ASARCO Mercantile Company
(c) Enthone, Inc.
(d) Int'l. Metal Co.

(e) Lone Star Lead Const. Corp.
(f) No. Peru Mining Corp.
(g) ASARCO Australia
(h) [ASARCO] Developments
(i) ASARCO Exploration Company
(j) Compania American Smelting, S.A.
(k) Lake Asbestos of Quebec
(l) ASARCO Int'l. Corp.
(m) So. Peru Copper Corp.
(n) So. Peru Copper Sales Corp.
(o) M.I.M. Holdings, Ltd.
(p) Neptune Gold Mining Company
(q) ASARCO Mexicana, S.A.
(r) General Cable
(s) Revere Copper
(t) Hecla Mining Co.
(u) Kennecott Copper
(v) Phelps Dodge
(w) United Park City Mines
(x) Mexicana de Cobre, S.A.;

or

(2) the capital gain realized from the sale of General Cable stock; or

(3) the capital gain, interest and royalty income of the taxpayer

and the business activity of the taxpayer in the state of Idaho?

D. In order to subject dividend income to formulary apportionment, must a specific connection be shown to exist between the State of Idaho and the dividend paying corporation?

E. If the Court concludes in the affirmative on B. and C. or in the affirmative on B. and the negative on D., can the state properly use foreign source income to compute the tax liability of the taxpayer?

F. If the Court concludes that the state can properly use foreign source income to compute the tax liability of the taxpayer, can the state properly use the dividend income from the various corporations which are not unitized without increasing the size of the denominators in the three factors to properly reflect the property, payroll and sales of the various corporations in which taxpayer has an interest in computing the tax liability of the taxpayer?

13. There are no supplemental orders which will expedite the trial.

14. The exhibits admitted without objection and the only ones contemplated as necessary by the parties at this time are set out in Exhibits 1 and 2 of Annex 1 and Annex 1 itself.

15. Because of the unique nature of this action and notwithstanding paragraph 13 hereof, other exhibits may be introduced at trial, in the interest of justice, including those exhibits necessary for impeachment.

16. The plaintiff witnesses, if used, will be:

A. H. Q. Stringham
American Smelting & Refining Co.

B. John Pecca
American Smelting & Refining Co.
120 Broadway
New York, N. Y. 10005

C. Larry Alder
Idaho State Tax Commission
5257 Fairview
Boise, Idaho 83704

17. The defendant witnesses, if used, will be:

A. Arthur Schwartz
California State Franchise Tax Board

B. Frank Medlin
Idaho State Tax Commission

18. All discovery has been completed.

19. The trial dates are February 5, 6 and 7, 1975.

/s/ MARION J. CALLISTER
Marion J. Callister
District Judge

ACCEPTED WITHOUT OBJECTION

/s/ THEODORE V. SPANGLER
Theodore V. Spangler
Attorney for Defendant

/s/ PHILIP E. PETERSON
Philip E. Peterson

/s/ R. MICHAEL SOUTHCOMBE
R. Michael Southcombe
Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Case No. 53182

AMERICAN SMELTING AND REFINING COMPANY,
Plaintiff,

vs.

IDAHO STATE TAX COMMISSION,
Defendant.

STIPULATION

[filed January 30, 1975]

1. With the exception of the adjustment to the revenue (sales) factor, the facts reflected in the MTC audit report are correct and the MTC Report will be admitted into evidence. The audit report is attached as Exhibit No. 1.

2. State tax returns for 1969 and 1970 will be admitted as evidence.

3. The 1968 State tax return will be admitted. The parties state that the 1968 return as submitted was prepared by use of separate accounting and that adjustments reflecting the result of a compromise agreement executed in 1970 (by which the taxpayer acceded to objection by the state to its use of separate accounting and agreed to apportion income other than that resulting from dividends, interest, royalties, and capital gains) were made by the state without submission of an amended return and the tax based upon these adjustments paid by taxpayer.

A copy of the compromise agreement is attached and marked Exhibit No. 2.

4. The volume of sales by ASARCO to the other corporations whose dividends are apportioned by the State Tax Commission as business income or which are unitized and the volume of sales to other customers in dollars and as a percentage of total ASARCO sales in each of the years involved is:

CHART A

Customer		1968 $ amt. of sales	1968 % of total sales	1969 $ amt. of sales	1969 % of total sales	1970 $ amt. of sales	1970 % of total sales
Federated Metals of Canada	)	776,844	0.13	939,197	0.13	1,053,588	0.16
ASARCO Mercantile Company	)	none		none		none	
Enthone, Inc.	) UNITIZED	$ 262,382	0.04	$ 552,387	0.07	$ 447,907	0.07
Int'l. Metal Co.	)	none*		none*		none*	
Lone Star Lead Const. Corp.	)	65,732		71,201		258,602	0.04
No. Peru Mining Corp.	)	none		none		none	
ASARCO Australia		none		none		none	
ASARCO Developments		none		none		none	
ASARCO Exploration Company		none		none		none	
Compania American Smelting, S.A.		none		none		none	
Lake Asbestos of Quebec		none		none		none	
ASARCO Int'l. Corp.		none		none		none	
So. Peru Copper Corp.		none		none		none	
So. Peru Copper Sales Corp.		none		none		none	
M.I.M. Holdings, Ltd.		none		none		none	
Neptune Gold Mining Company		none		none		none	
ASARCO Mexicana, S.A.		none		24,169		14,902	
General Cable		31,558,000	5.3	45,952,000	6.3	47,000,000	7.0
Revere Copper		17,223,000	2.9	29,324,000	4.0	22,260,000	3.3
Hecla Mining Co.		none		none		none	
Kennecott Copper		3,259,918	0.55	5,614,329	0.77	5,227,649	0.79
Phelps Dodge		176,552	0.03	23,786	0.003	806,828	0.12
United Park City Mines		minimal		minimal		minimal	
All others **		536,910,402	91.0	644,367,070	89.0	594,211,356	89.0
TOTALS		$590,232,830		$726,868,139		$671,280,832	

* International Metal Company is foreign sales agent for American Smelting and Refining Company;

** This includes sales to all other customers, including some in which ASARCO may own common stock but in which ownership is miniscule and therefore disregarded.

5. The percentage of ownership by ASARCO in the companies whose dividends are apportioned by the State Tax Commission as business income or which are unitized is as follows: *

CHART B

Corporation		% Ownership by ASARCO		
		1968	1969	1970
Federated Metals of Canada	)	100	100	100
ASARCO Mercantile Company	)	100	100	100
Enthone, Inc.	) UNITIZED	100	100	100
Int'l. Metal Co.	)	100	100	100
Lone Star Lead Const. Corp.	)	100	100	100
No. Peru Mining Corp.	)	100	100	100
ASARCO Australia		100	100	100
ASARCO Developments		100	100	100
ASARCO Exploration Company		100	100	100
Compania American Smelting, S.A.		100	100	100
Lake Asbestos of Quebec		100	100	100
ASARCO Int'l. Corp.		100	100	100
So. Peru Copper Corp.		51.5	51.5	51.5
So. Peru Copper Sales Corp.		51.5	51.5	51.5
M.I.M. Holdings Ltd. (Mt. Isa)		53.0	52.7	52.7
Neptune Gold Mining Co.		51.8	51.8	51.8
ASARCO Mexicana, S.A.		49	49	49
Mexicana de Cobre, S.A.		49	49	49
General Cable		35.9	35.9	0
Revere Copper		33.6	33.5	33.4
Hecla Mining Co.		1.3	1.1	.9
Kennecott Copper		.4	.3	.3
Phelps Dodge		.8	.8	.8
United Park City Mines		12.7	12.5	12.5

* Other dividends are apportioned by the State Tax Commission but are not included because of the miniscule interest of ASARCO in these companies.

6. (a) The directors of the corporations whose dividends are apportioned as business income by the State Tax Commission or which are unitized are listed below. The names of those directors who were also directors of ASARCO are [underscored] *italicized*:

FEDERATED METALS OF CANADA (UNITIZED)

1968	1969	1970
R. D. Bradford	*F. G. Hamrick*	*F. G. Hamrick*
F. G. Hamrick	*E. McL. Tittmann*	*E. McL. Tittmann*
E. McL. Tittmann	*C. F. Barber*	*C. F. Barber*
R. W. Vaughan	G. F. Norman	*R. L. Hennebach*
A. M. Callis	R. L. Hennebach	G. F. Norman
H. L. Goodenough	R. A. Kenkel	R. A. Kenkel
M. R. Herman	K. Smalberg	K. Smalberg
G. F. Norman	H. Q. Stringham	H. Q. Stringham

ASARCO MERCANTILE COMPANY (UNITIZED)

1968	1969	1970
F. G. Hamrick	*F. G. Hamrick*	*F. G. Hamrick*
H. L. Goodenough	H. L. Goodenough	A. J. Gillespie, Jr.
J. P. Harrison	J. P. Harrison	J. P. Harrison

ENTHONE, INC. (UNITIZED)

1968	1969	1970
C. F. Barber	*C. F. Barber*	*C. F. Barber*
R. D. Bradford	*F. G. Hamrick*	*F. G. Hamrick*
F. G. Hamrick	*E. McL. Tittmann*	*E. McL. Tittmann*
E. McL. Tittmann	R. D. Bradford	*R. L. Hennebach*
A. M. Callis	A. M. Callis	C. C. Helmle
C. C. Helmle	C. C. Helmle	R. A. Kenkel
M. R. Herman	R. A. Kenkel	K. Smalberg

INTERNATIONAL METAL CO. (UNITIZED)

1968	1969	1970
R. D. Bradford	*F. G. Hamrick*	*F. G. Hamrick*
F. G. Hamrick	*S. D. Strauss*	*S. D. Strauss*
S. D. Strauss	*E. McL. Tittmann*	*E. McL. Tittmann*
E. McL. Tittmann	R. D. Bradford	*C. F. Barber*
K. H. Brownell	J. C. Buck	J. C. Buck
J. C. Buck	R. L. Wilcox	R. L. Wilcox

LONE STAR LEAD CONSTRUCTION CORPORATED (UNITIZED)

1968	1969	1970
R. D. Bradford	*E. McL. Tittmann*	*E. McL. Tittmann*
E. McL. Tittmann	R. D. Bradford	R. L. Hennebach
A. M. Callis	A. M. Callis	R. A. Kenkel

NORTHERN PERU MINING CORPORATION (UNITIZED)

1968	1969	1970
C. F. Barber	*C. F. Barber*	*C. F. Barber*
R. D. Bradford	*F. G. Hamrick*	*R. L. Hennebach*
F. G. Hamrick	*C. E. Nelson*	*F. G. Hamrick*
C. E. Nelson	*E. McL. Tittmann*	*S. D. Strauss*
E. McL. Tittmann	R. D. Bradford	*C. E. Nelson*
R. W. Vaughan	A. J. Alvarez Calderon	*E. McL. Tittmann*
A. J. Alvarez Calderon	H. L. Goodenough	J. G. Cox
H. L. Goodenough	A. L. Hatch	A. J. Alvarez Calderon
A. L. Hatch	C. P. Pollock	C. P. Pollock
C. P. Pollock	R. W. Vaughan	H. Q. Stringham
A. B. Williams	A. B. Williams	A. B. Williams

ASARCO AUSTRALIA

R. W. Vaughan	*R. W. Vaughan*	
C. P. Pollock	C. P. Pollock	C. P. Pollock
J. J. Collins	J. J. Collins	J. J. Collins
W. P. Rowland	W. P. Rowland	W. P. Rowland
David Fletcher	David Fletcher	David Fletcher

ASARCO DEVELOPMENTS (NZ), LTD.

THERE WERE NO COMMON DIRECTORS BETWEEN ASARCO DEVELOPMENTS (NZ), LTD. AND ASARCO FOR ANY OF THE THREE YEARS IN QUESTION.

ASARCO EXPLORATION COMPANY

1968	1969	1970
C. F. Barber	*C. F. Barber*	*C. F. Barber*
R. D. Bradford	*C. E. Nelson*	*C. E. Nelson*
C. E. Nelson	*E. McL. Tittmann*	*R. L. Hennebach*
E. McL. Tittmann	R. D. Bradford	*E. McL. Tittmann*
G. E. Hill	G. E. Hill	S. A. Amzalone
T. C. Osborne	T. C. Osborne	G. E. Hill
C. P. Pollock	C. P. Pollock	C. P. Pollock

COMPANIA AMERICAN SMELTING, S.A.

1968	1969	1970
Jaime Yrarrazaval	Jaime Yrarrazaval	Jaime Yrarrazaval
W. T. Brown	W. T. Brown	W. T. Brown
A. G. Dell	A. G. Dell	A. G. Dell
Augusto Cerda	Augusto Cerda	Augusto Cerda
Mariano Puga	Mariano Puga	Juan de Dios Vial

LAKE ASBESTOS OF QUEBEC, LTD.

1968	1969	1970
C. F. Barber	*C. F. Barber*	*C. F. Barber*
R. D. Bradford	*S. D. Strauss*	*S. D. Strauss*
S. D. Strauss	*E. McL. Tittmann*	*E. McL. Tittmann*
E. McL. Tittmann	*F. G. Hamrick*	*F. G. Hamrick*
R. W. Vaughan	*R. L. Hennebach*	*R. L. Hennebach*
M. J. Messel	M. J. Messel	M. J. Messel
C. P. Pollock	C. P. Pollock	C. P. Pollock

ASARCO INTERNATIONAL CORPORATION

1968	1969	1970
C. F. Barber	*C. F. Barber*	*C. F. Barber*
F. G. Hamrick	*F. G. Hamrick*	*F. G. Hamrick*
R. W. Vaughan	H. L. Goodenough	M. J. Messel
H. L. Goodenough	M. J. Messel	R. Richter
M. J. Messel	R. Richter	J. C. Buck
R. Richter	J. S. Smart, Jr.	A. J. Gillespie, Jr.
J. S. Smart, Jr.	R. W. Vaughan	H. Q. Stringham

SOUTHERN PERU COPPER CORPORATION

1968	1969	1970
F. G. Hamrick	*C. F. Barber*	*C. F. Barber*
C. E. Nelson	*F. G. Hamrick*	*F. G. Hamrick*
E. McL. Tittmann	*C. E. Nelson*	*C. E. Nelson*
R. W. Vaughan	*E. McL. Tittmann*	*E. McL. Tittmann*
F. W. Archibald	*F. W. Archibald*	*F. W. Archibald*
R. C. Bonebrake	R. C. Bonebrake	R. C. Bonebrake
W. E. Fenzi	W. E. Fenzi	W. E. Fenzi
A. Hohagen	A. Hohagen	A. Hohagen
R. P. Koenig	R. P. Koenig	R. P. Koenig
P. Malozemoff	P. Malozemoff	P. Malozemoff
R. G. Page	R. G. Page	R. G. Page
H. D. Starr	H. D. Starr	H. D. Starr
S. P. Wimpfen	S. P. Wimpfen	

SOUTHERN PERU COPPER SALES CORPORATION

1968	1969	1970
C. F. Barber	*C. F. Barber*	*C. F. Barber*
F. G. Hamrick	*F. G. Hamrick*	*F. G. Hamrick*
R. L. Hennebach	*R. L. Hennebach*	*R. L. Hennebach*
S. D. Strauss	*S. D. Strauss*	*S. D. Strauss*
R. W. Vaughan	A. L. Hatch	A. J. Gillespie, Jr.
H. L. Goodenough	A. J. Gillespie, Jr.	H. Q. Stringham
A. L. Hatch	H. Q. Stringham	J. G. Cox

M.I.M. HOLDINGS, LTD. (MT. ISA)

THERE WERE NO COMMON DIRECTORS BETWWEN M.I.M. HOLDINGS, LTD. AND ASARCO IN ANY OF THE THREE YEARS IN QUESTION.

NEPTUNE GOLD MINING CO.

1968	1969	1970
C. F. Barber	*C. F. Barber*	*C. F. Barber*
F. G. Hamrick	*F. G. Hamrick*	*F. G. Hamrick*
C. E. Nelson	*C. E. Nelson*	*C. E. Nelson*
E. H. Scheick	E. H. Scheick	E. H. Scheick
H. S. Anderson	H. S. Anderson	H. S. Anderson
R. M. Reininger	R. M. Reininger	R. M. Reininger

ASARCO MEXICANA, S.A.

1968	1969	1970
J. F. Fernandez	J. Larrea	J. Larrea
D. Longoria	B. Pagliai	B. Pagliai
E. Escandon	A. R. Galindo, Jr.	A. R. Galindo, Jr.
R. O'Farrill, Jr.	C. Sada	C. Sada
I.G.P. Serrano	J. Cortina	J. F. Fernandez
G. Q. Bravo	J. S. Piedecasas	J. Larrea, Jr.
I.J.C. Martinez	J. Larrea, Jr.	E. Rojas
	E. Rojas	

SERIES "B" STOCK

1968	1969	1970
C. F. Barber	*C. F. Barber*	*C. F. Barber*
F. G. Hamrick	*F. G. Hamrick*	*F. G. Hamrick*
H. L. Hennebach	*R. L. Hennebach*	*R. L. Hennebach*
R. D. Bradford	*C. E. Nelson*	*S. D. Strauss*
C. E. Nelson	*S. D. Strauss*	*F. W. Archibald*
S. D. Strauss	H. L. Montague	K. D. Loughridge
R. W. Vaughan	C. P. Pollock	T. A. Snedden

MEXICANA DE COBRA, S.A.
NOT AVAILABLE

GENERAL CABLE

THERE WERE NO COMMON DIRECTORS BETWEEN GENERAL CABLE AND ASARCO IN ANY OF THE THREE YEARS IN QUESTION.

REVERE COPPER

THERE WERE NO COMMON DIRECTORS BETWEEN [ASARCO] AND REVERE COPPER IN ANY OF THE THREE YEARS IN QUESTION.

HECLA MINING CO.

THERE WERE NO COMMON DIRECTORS BETWEEN ASARCO AND HELCA MINING CO. IN ANY OF THE THREE YEARS IN QUESTION.

KENNECOTT COPPER

THERE WERE NO COMMON DIRECTORS BETWEEN ASARCO AND KENNECOTT COPPER IN ANY OF THE THREE YEARS IN QUESTION.

PHELPS DODGE

THERE WERE NO COMMON DIRECTORS BETWEEN ASARCO AND PHELPS DODGE IN ANY OF THE THREE YEARS IN QUESTION.

UNITED PARK CITY MINES

THERE WERE NO COMMON DIRECTORS BETWEEN ASARCO AND UNITED PARK CITY MINES IN ANY OF THE THREE YEARS IN QUESTION.

(b) The officers of the corporations whose dividends are apportioned as busines income by the State Tax Commission or which are unitized are listed below with their titles indicated. The names of those who are also officers of ASARCO are [underscored] *italicized* with their titles at ASARCO indicated.

FEDERATED METALS OF CANADA (UNITIZED)

1968			1969			1970		
NAME	TITLE	ASARCO	NAME	TITLE	ASARCO	NAME	TITLE	ASARCO
A. M. Callis	Vice Pres.	Vice Pres.	*F. G. Hamrick*	Vice Pres.	Vice Pres.	*F. G. Hamrick*	Vice Pres.	Vice Pres.
R. W. Vaughan	Vice Pres.	Vice Pres.	*A. J. Gillespie, Jr.*	Secty.	Secty.	*A. J. Gillespie, Jr.*	Secty.	Secty.
F. G. Hamrick	Treas.	V.P., Treas.	*R. A. Kenkel*	Vice Pres.	Vice Pres.	*R. A. Kenkel*	Vice Pres.	Vice Pres.
H. L. Goodenough	Comptroller	Comptroller	*R. J. Plumb, Jr.*	Treas.	Treas.	*R. J. Plumb, Jr.*	Treas.	Treas.
H. Howe	Secty.	Secty.	*H. Q. Stringham*	Comp.	Comp.	*H. Q. Stringham*	Comp.	Comp.
G. F. Norman	Pres.		G. F. Norman	Pres.		G. F. Norman	Pres.	
H. D. Tribey	Vice Pres.							

ASARCO MERCANTILE COMPANY (UNITIZED)

J. P. Harrison	Pres.	Vice Pres.	*J. P. Harrison*	Pres.	Vice Pres.	*J. P. Harrison*	Pres.	Vice Pres.
F. G. Hamrick	Treas.	V.P., Treas.	*F. G. Hamrick*	Treas.	Vice Pres.	*A. J. Gillespie, Jr.*	Secty.	Secty.
H. L. Goodenough	Comp.	Comp.	*A. J. Gillespie, Jr.*	Secty.	Secty.	*R. J. Plumb, Jr.*	Treas.	Treas.
Harold Howe	Secty.	Secty.	*H. L. Goodenough*	Comp.	Comp.	*H. Q. Stringham*	Comp.	Comp.
J. Z. Williams	Vice Pres.		G. Rafos	Vice Pres.		G. Rafos	Vice Pres.	

ENTHONE, INC. (UNITIZED)

A. M. Callis	Vice Pres.	Vice Pres.	*R. A. Kenkel.*	Vice Pres.	Vice Pres.	*F. G. Hamrick*	Vice Pres.	V.P.
F. G. Hamrick	Treas.	V.P., Treas.	F. *G. Hamrick*	Treas.	Vice Pres.	*R. A. Kenkel*	Vice Pres.	V.P.
H. L. Goodenough	Comp.	Comp.	*A. M. Callis*	Vice Pres.	Vice Pres.	*R. J. Plumb, Jr.*	Treas.	Treas.
Harold Howe	Secty.	Secty.	*H. L. Goodenough*	Comp.	Comp.	*H. Q. Stringham*	Comp.	Comp.
C. C. Helmle	Pres.		C. C. Helmle	Pres.		C. C. Helmle	Pres.	
M. R. Herman	Vice Pres.							

INTERNATIONAL METAL CO. (UNITIZED)

1968			1969			1970		
NAME	TITLE	ASARCO	NAME	TITLE	ASARCO	NAME	TITLE	ASARCO
S. D. Strauss	Pres.	Vice Pres.	*S. D. Strauss*	Pres.	Vice Pres.	*S. D. Strauss*	Pres.	Vice Pres.
F. G. Hamrick	Treas.	V.P., Treas.	*F. G. Hamrick*	Treas.	Vice Pres.	*A. J. Gillespie, Jr.*	Secty.	Secty.
H. L. Goodenough	Comp.	Comp.	*A. J. Gillespie, Jr.*	Secty.	Secty.	*R. J. Plumb, Jr.*	Treas.	Treas.
H. Howe	Secty.	Secty.	*H. L. Goodenough*	Comp.	Comp.	*H. Q. Stringham*	Comp.	Comp.
K. H. Brownell	Vice Pres.		J. C. Buck	Vice Pres.		J. C. Buck	Vice Pres.	
J. C. Buck	Vice Pres.		R. L. Wilcox	Vice Pres.		R. L. Wilcox	Vice Pres.	

LONE STAR LEAD CONSTRUCTION CORP. (UNITIZED)

A. M. Callis	Pres.	V.P.	*F. G. Hamrick*	Treas.	V.P.	*A.J. Gillespie, Jr.*	Secty.	Secty.
F. G. Hamrick	Treas.	V.P., Treas.	*A. J. Gillespie, Jr.*	Secty.	Secty.	*R. A. Kenkel*	Pres.	V.P.
H. L. Goodenough	Comp.	Comp.	*A. M. Callis*	Pres.	V.P.	*R. J. Plumb, Jr.*	Treas.	Treas.
H. Howe	Secty.	Secty.	*H. L. Goodenough*	Comp.	Comp.	*H. Q. Stringham*	Comp.	Comp.
E. J. Baker	V.P.		E. J. Baker	V. P.		E. J. Baker	V. P.	

NORTHERN PERU MINING CORPORATION (UNITIZED)

C. E. Nelson	Pres.	V.P.	*C. E. Nelson*	Pres.	V.P.	*C. E. Nelson*	Pres.	V.P.
R. W. Vaughan	V.P.	V.P.	*F. G. Hamrick*	Treas.	V.P.	*F. G. Hamrick*	V.P.	V.P.
F. G. Hamrick	Treas.	V.P., Treas.	*A. J. Gillespie, Jr.*	Secty.	Secty.	*A. J. Gillespie, Jr.*	Secty.	Secty.
H. L. Goodenough	Comp.	Comp.	*H. L. Goodenough*	Comp.	Comp.	*R. J. Plumb, Jr.*	Treas.	Treas.
H. Howe	Secty.	Secty.	R. W. Vaughan	V.P.		*H. Q. Stringham*	Comp.	Comp.
A. B. Williams	V.P.		A. B. Williams	V.P.		A. B. Williams	V.P.	

1968			1969			1970		
NAME	TITLE	ASARCO	NAME	TITLE	ASARCO	NAME	TITLE	ASARCO
H. Howe	Secty.	Secty.	H. Howe	Secty.	Secty.	*A. J. Gillespie, Jr.	Secty.	Secty.

ASARCO DEVELOPMENTS (N.Z.) LTD.

THERE WERE NO COMMON OFFICERS BETWEEN ASARCO DEVELOPMENTS (N.Z.) LTD. AND ASARCO IN ANY OF THE THREE YEARS IN QUESTION.

ASARCO EXPLORATION CO. OF CANADA LTD.

C. P. Pollock	Pres.	V.P.	*C. P. Pollock*	Pres.	V.P.	*C. P. Pollock*	Pres.	V.P.
C. E. Nelson	V.P.	V.P.	*C. E. Nelson*	V.P.	V.P.	*C. E. Nelson*	V.P.	V.P.
F. G. Hamrick	Treas.	V.P., Treas.	*F. G. Hamrick*	Treas.	V.P.	*R. J. Plumb, Jr.*	Treas.	Treas.
H. L. Goodenough	Comp.	Comp.	*H. L. Goodenough*	Comp.	Comp.	*H. Q. Stringham*	Comp.	Comp.
H. Howe	Secty.	Secty.	*A. J. Gillespie, Jr.*	Secty.	Secty.	*A. J. Gillespie, Jr.*	Secty.	Secty.

COMPANIA AMERICAN SMELTING, S.A.

NOT PRESENTLY AVAILABLE

LAKE ASBESTOS OF QUEBEC

C. P. Pollock	V.P.	V.P.	*C. P. Pollock*	V.P.	V.P.	*C. P. Pollock*	V.P.	V.P.
F. G. Hamrick	Treas.	V.P., Treas.	*A. J. Gillespie, Jr.*	Secty.	Secty.	*A.J. Gillespie, Jr.*	Secty.	Secty.
H. L. Goodenough	Comp.	Comp.	*R.J. Plumb, Jr.*	Treas.	Treas.	*R. J. Plumb, Jr.*	Treas.	Treas.
H. Howe	Secty.	Secty.	*H. Q. Stringham*	Comp.	Comp.	*H. Q. Stringham*	Comp.	Comp.
M. J. Messel	Pres.		M. J. Messel	Pres.		M. J. Messel	Pres.	
L. C. Piuze	V.P.		L. C. Piuze	V.P.		L. C. Piuze	V.P.	

1968			1969			1970		
NAME	TITLE	ASARCO	NAME	TITLE	ASARCO	NAME	TITLE	ASARCO
H. Howe	Secty.	Secty.	*H. Q. Stringham*	Treas.	Comp.	*H. Q. Stringham*	Treas.	Comp.
M. J. Messel	Pres.		*A.J. Gillespie, Jr.*	Secty.	Secty.	*A. J. Gillespie, Jr.*	Secty.	Secty.
J. S. Smart, Jr.	V.P.		M. J. Messel	Pres.		M. J. Messel	Pres.	
R. P. Gagnon	V.P.		J. S. Smart, Jr.	V. P.		R. P. Gagnon	V.P.	
H. Shapiro	Comp.		R. P. Gagnon	V.P.		J. C. Buck	V.P.	
H. Q. Stringham	Treas.							
SOUTHERN PERU COPPER CORPORATION								
R. W. Vaughan	V.P.	V.P.	*R. L. Hennebach*	V.P.	Exec. V.P.	*R. L. Hennebach*	V.P.	Exec. V.P.
F. G. Hamrick	Treas.	V.P., Treas.	*F. G. Hamrick*	Treas.	V.P.	*F. W. Archibald*	Pres.	V.P.
H. Howe	Secty.	Secty.	*A.J. Gillespie, Jr.*	Secty.	Secty.	*F. G. Hamrick*	Treas.	V.P.
S. P. Wimpfen	Pres.		S. P. Wimpfen	Pres.		*A.J. Gillespie, Jr.*	Secty.	Secty.
C. A. Kursell	V. P.		J. P. Cougnenc	V.P.		J. P. Cougnenc	V.P.	
J. D. Wright	Comp.		J. D. Wright	Comp.		J. B. Watson	Comp.	
SOUTHERN PERU COPPER SALES CORP.								
R. W. Vaughan	Pres.	V.P.	*A. L. Hatch*	Pres.	V.P.	*A.J. Gillespie, Jr.*	Secty.	Secty.
H. Howe	Secty.	Secty.	*A.J. Gillespie, Jr.*	Secty.	Secty.	*S. D. Strauss*	V.P.	V.P.
A. L. Hatch	V.P.		*S. D. Strauss*	V.P.	V.P.	J. G. Cox	Pres.	
D. Wright	Treas.& Comp.		D. Wright	Treas.& Comp.		B. Watson	Treas.& Comp.	

M.I.M. HOLDINGS LTD.

THERE WERE NO COMMON OFFICERS BETWEEN M.I.M. HOLDINGS LTD. AND ASARCO IN ANY OF THE THREE YEARS IN QUESTION.

NEPTUNE GOLD MINING CO.

1968			1969			1970		
NAME	TITLE	ASARCO	NAME	TITLE	ASARCO	NAME	TITLE	ASARCO
C. E. Nelson	Pres.	V.P.	*C. E. Nelson*	Pres.	V.P.	*C. E. Nelson*	Pres.	V.P.
C. F. Barber	V.P.	Exec. V.P.	*C. F. Barber*	V.P.	Pres.	*C. F. Barber*	V.P.	Pres.
F. G. Hamrick	Treas.	V.P.& Treas.	*A.J. Gillespie, Jr.*	Secty.	Secty.	*A.J. Gillespie, Jr.*	Secty.	Secty.
H. L. Goodenough	Comp.	Comp.	*R.J. Plumb, Jr.*	Treas.	Treas.	*R.J. Plumb, Jr.*	Treas.	Treas.
E. H. Scheick	V.P.		*H. Q. Stringham*	Comp.	Comp.	*H. Q. Stringham*	Comp.	Comp.
H. S. Anderson	V.P.		E. H. Scheick	V.P.		E. H. Scheick	V.P.	
			H. S. Anderson	V.P.		H. S. Anderson	V.P.	

ASARCO MEXICANA, S.A.

THERE WERE NO COMMON OFFICERS BETWEEN M.I.M. HOLDINGS LTD. AND ASARCO IN ANY OF THE THREE YEARS IN QUESTION.

GENERAL CABLE

THERE WERE NO COMMON OFFICERS BETWEEN GENERAL CABLE AND ASARCO IN ANY OF THE THREE YEARS IN QUESTION.

REVERE COPPER CO.

THERE WERE NO COMMON OFFICERS BETWEEN REVERE COPPER CO. AND ASARCO IN ANY OF THE THREE YEARS IN QUESTION.

HECLA MINING CO.

THERE WERE NO COMMON OFFICERS BETWEEN HECLA MINING CO. AND ASARCO IN ANY OF THE THREE YEARS IN QUESTION.

KENNECOTT COPPER CO.

THERE WERE NO COMMON OFFICERS BETWEEN KENNECOTT COPPER CO. AND ASARCO IN ANY OF THREE YEARS IN QUESTION.

PHELPS DODGE

THERE WERE NO COMMON OFFICERS BETWEEN PHELPS DODGE AND ASARCO IN ANY OF THE THREE YEARS IN QUESTION.

UNITED PARK CITY MINES

THERE WERE NO COMMON OFFICERS BETWEEN UNITED PARK CITY MINES AND ASARCO IN ANY OF THE THREE YEARS IN QUESTION.

7. The volume of sales to ASARCO and to other customers by corporations whose dividends are apportioned by the State Tax Commission as business income or which are unitized in dollars and as a percentage of total sales of each of the said corporations in each of the years involved is:

CHART C

1968

Corporations		Sales to ASARCO $ Amt. of sales	Sales to ASARCO % of total sales	Sales to Listed Corporations* corp. name	Sales to Listed Corporations* $ Amt. of sales	Sales to Listed Corporations* % of total sales	Sales to All Others $ Amt. of sales	Sales to All Others % of total sales	TOTAL SALES 100% of total sales $ Amt.
Federated Metals of Canada	)	278,639	1.7	all combined	341	–0–	15,859,177	98.3	16,138,157
ASARCO Mercantile Co.	)	1,072,276	40.2	Lake Asbestos	38,505	1.4			2,670,637
	)			No. Peru	162,630	6.1			
	)			Neptune Mines	132,104	4.9			
	)			So. Peru	1,265,122	47.4			
	) U								
	) N			Federated Metal					
Ethone, Inc.	) I	265,477	4.4	of Canada	42,972	0.7	5,719,329	94.9	6,027,778
Int'l. Metal Co.	) T	3,283,592	55.2				2,667,705	44.8	5,951,297
Lone Star Lead	) I								
Const. Corp.	) Z	226,087	31.6				488,931	68.4	715,018
	) E								
	) D								
No. Peru Mining Corp.	)	8,091,965	77.1	Int'l. Metal (incl. in sale to ASARCO)			2,407,133	22.9	10,499,098
ASARCO Australia		12,798	4.8				253,291	95.2	266,089
ASARCO Developments		2,320	1.1				211,597	98.9	213,917
ASARCO Exploration Co.		29,009	100.0						29,009
Compania American Smelting, S.A.									none
Lake Asbestos of Quebec				ASARCO Int'l. Corp.	13,317,517	81.7	2,984,008	18.3	16,301,525
ASARCO Int'l. Corp.		none					14,202,229	100.0	14,202,229
				So. Peru					
So. Peru Copper Corp.		49,824,905	35.8	copper sales	39,522,877	28.4	49,985,420	35.8	139,333,202
So. Peru Copper Sales Corp.							39,272,410	100.0	39,272,410
M.I.M. Holdings Ltd.		223,571	0.2				107,256,980	99.8	107,480,551
Neptune Gold Mining Co.		2,661,875	100.0						2,661,875
ASARCO Mexicana, S.A.***									108,163,720
General Cable		517,000	0.1						353,334,000
Revere Copper		4,341,000	1.3						340,159,000
Hecla Mining Co.		minimal							No Inform.**
Kennecott Copper		minimal							No Inform.**
Phelps Dodge		minimal							No Inform.**
United Park City Mines		minimal							No Inform.**

* Sales to other corporations whose dividends are apportioned by the State Tax Commission or which are unitized, if any.

** This data is not available from ASARCO records or published reports.

*** ASARCO acted as a commission agent for United States sales.

CHART D

1969

Corporations		Sales to ASARCO $ Amt. of sales	Sales to ASARCO % of total sales	Sales to Listed Corporations* corp. name	$ Amt. of sales	% of total sales	Sales to All Others $ Amt. of sales	% of total sales	TOTAL SALES 100% of total sales $ Amt.
Federated Metals of Canada	)	349,403	1.9	All Combined	2,934	–0–	17,710,670	98.1	18,063,007
ASARCO Mercantile Co.	)	990,538	54.0	Lake Asbestos	15,115	0.8			
	)			No. Peru	102,223	5.6			
	) U			Neptune Mines	64,523	3.6			
	) N			So. Peru	660,369	36.0			1,832,768
	) I			Federated Metal					
Enthone, Inc.	) T	324,235	4.6	of Canada	15,879	0.2	6,743,152	95.2	7,083,266
Int'l. Metal Co.	) I	4,873,475	41.9				6,756,564	58.1	11,630,039
Lone Star Lead Const.	) Z								
Corp.	) E	257,076	40.9				372,041	59.1	629,117
	) D								
	)								
No. Peru Mining Corp.	)	9,544,203	89.3	Int'l. Metal (incl. in sale to ASARCO)			1,146,318	10.7	10,690,521
ASARCO Australia		24,205	4.8				484,099	95.2	508,304
ASARCO Developments		10,000	19.7				40,708	80.3	50,708
ASARCO Exploration Company		47,594	100						47,594
Compania American Smelting, S.A.		none							none
Lake Asbestos of Quebec		none		ASARCO Int'l Corp.	12,252,332	77.9	3,472,867	22.1	15,725,199
ASARCO Int'l Corp.		none					12,609,908	100.0	12,609,908
So. Peru Copper Corp.		64,604,211	38.6	So. Peru copper sales	45,742,273	27.4	56,874,836	34.0	167,221,320
So. Peru Copper Sales Corp.		none					49,286,449	100.0	49,286,449
M.I.M. Holdings Ltd.		1,755,014	1.2				147,132,304	98.8	148,887,318
Neptune Gold Mining Co.		2,211,489	100.0						2,211,489
ASARCO Mexicana, S.A.***									111,602,437
General Cable		378,000	0.1						365,770,000
Revere Copper		6,012,000	1.7						363,321,000
Hecla Mining Co.		minimal							No Inform.**
Kennecott Copper		minimal							No Inform.**
Phelps Dodge		minimal							No Inform.**
United Park City Mines		minimal							No Inform.**

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* Sales to other corporations whose dividends are apportioned by the State Tax Commission or which are unitized, if any.

** This data is not available from ASARCO records or published reports.

*** ASARCO acted as a commission agent for United States sales.

CHART E

1970

Corporations		Sales to ASARCO $ Amt. of sales	Sales to ASARCO % of total sales	Sales to Listed Corporations* corp. name	$ Amt. of sales	% of total sales	Sales to All Others $ Amt. of sales	% of total sales	TOTAL SALES 100% of total sales $ Amt.
Federated Metals of Canada	)	130,253	0.8	All Combined	3,726	–0–	16,841,604	99.2	16,975,583
ASARCO Mercantile Company	) U	240,766	11.7	Lake Asbestos	29,048	1.4			
	) N			No. Peru	153,484	7.4			
	) I			Neptune Mines	132,830	6.4			
	) T			So. Peru	1,508,223	73.1			2,064,351
Enthone, Inc.	) I	1,131,930	17.0	Federated Metal of Canada	11,170	0.2	5,516,489	82.8	6,659,589
Int'l. Metal Co.	) Z	9,873,297							29,102,267
Lone Star Lead Const. Corp.	) E	831,529	68.4				384,503	31.6	1,216,032
	) D								
No. Peru Mining Corp.	)	10,100,802	99.7	Int'l. Metal (incl. in sale to ASARCO)			35,305	0.3	10,136,107
ASARCO Australia		32,577	4.8				651,550	95.2	684,127
ASARCO Developments		10,000	53.5				8,683	46.5	18,683
ASARCO Exploration Company		72,877	100.0						72,877
Compania American Smelting, S.A.		none							none
Lake Asbestos of Quebec		none		ASARCO Int'l Corp.	14,116,971	80.0	3,524,272	20.0	17,641,243
ASARCO Int'l Corp.		none					14,477,278	100.0	14,477,278
So. Peru Copper Corp.		56,410,642	21.5	So. Peru copper sales	42,921,408	16.4	162,972,229	62.1	262,304,279
So. Peru Copper Sales Corp.		none					41,624,234	100.0	41,624,234
M.I.M. Holdings, Ltd.		2,216,676	1.1				203,455,408	98.9	205,672,084
Neptune Gold Mining Co.		1,551,178	100.0						1,551,178
ASARCO Mexicana, S.A.***									113,901,319
General Cable		311,000	0.08						386,628,000
Revere Copper		4,210,000	1.28						328,345,000
Hecla Mining Co.		minimal							No Inform.**
Kennecott Copper		minimal							No Inform.**
Phelps Dodge		minimal							No Inform.**
United Park City Mines		minimal							No Inform.**

* Sales to other corporations whose dividends are apportioned by the State Tax Commission or which are unitized, if any.

** This data is not available from ASARCO records or published reports.

*** ASARCO acted as a commission agent for United States sales.

8. For the tax year 1968, a 5% stock ownership triggered a statutory presumption to the effect that all gains, losses, dividend and interest income are "an integral part of taxpayer's trade or business." For tax years 1969 and 1970, all gains, losses, dividend and interest income are presumed to be "an integral part of taxpayer's trade or business."

9. (a) The parties stipulate that none of the corporations set out below made any sales or purchases in Idaho, had any representation or agents in Idaho, held any real or personal property in Idaho, submitted tax returns to Idaho, or conducted any business activity in Idaho during the years 1968, 1969 and 1970, except that the State contends that the business activities of the parent corporation are attributable to the unitized corporations.

Federated Metals of Canada)
ASARCO Mercantile Company)
Enthone, Inc.) UNITIZED
Int'l. Metal Co.)
Lone Star Lead Const. Corp.)
No. Peru Mining Corp.)
ASARCO Australia
ASARCO Developments
ASARCO Exploration Company
Compania American Smelting, S.A.
Lake Asbestos of Quebec
ASARCO Int'l. Corp.
So. Peru Copper Corp.
So. Peru Copper Sales Corp.
M.I.M. Holdings Ltd.
Neptune Gold Mining Co.
ASARCO Mexicana, S.A.
Mexicana de Cobre, S.A.

9. (b) Information on sales and business activities by the following companies within the State of Idaho is not avail-

able to the parties and cannot be obtained from public records:

Kennecott Copper
Phelps Dodge
United Park City Mines
General Cable
Revere Copper
Hecla Mining Co.

10. The nature of the business operations of each of the corporations is:

Corporation	Nature of Business
Federated Metals of Canada	Processes and sells secondary metals.
ASARCO Mercantile Company	Purchase of machinery and equipment.
Enthone, Inc.	Production and sale of metal finishing chemicals.
Int'l. Metal Co.	Selling of ASARCO products abroad.
Lone Star Lead Const. Corp.	Lining of Tanks.
No. Peru Mining Corp.	Mines copper.
ASARCO Australia	Exploration company (Australia).
ASARCO Developments	Exploration company (New Zealand).
ASARCO Exploration Company	Exploration company (Canada).
Compania American Smelting, S.A.	Purchases ore in Chile.
Lake Asbestos of Quebec	Mining and selling asbestos.
ASARCO Int'l. Corp.	Sales corporation for Lake Asbestos.
So. Peru Copper Corp.	Mining copper.
So. Peru Copper Sales Corp.	Sells blister copper.
M.I.M. Holdings Ltd.	Production, smelting, refining and sale of copper, lead, silver and zinc.
Neptune Gold Mining Co.	Mining gold.
ASARCO Mexicana, S.A.	Mining, smelting and refining of copper.
Mexicana de cobre, S.A.	Land holding corporation.
General Cable	Manufacture and sale of cables.
Revere Copper	Manufacture and sale of copper wares.
Hecla Mining	Mining and sale of silver ore.
Kennecott Copper	Mining, smelting, refining and sale of copper.
Phelps Dodge	Mining, smelting, refining and sale of copper.
United Park City Mines	Mining silver, lead and zinc; owning and operating resort facilities.

11. The sources and amounts of Royalties, Capital Gains, Dividends and Interest for the years 1968, 1969 and 1970 are:

ROYALTIES

	1968	1969	1970
Total patent royalties	$ 863,495	$ 914,043	$ 1,144,753
Total mine royalties	24,057	26,201	24,357
Royalties paid by listed corporations:			
M.I.M. Holdings, Ltd.	33,323	34,342	26,919
Revere Copper	4,000	6,000	4,700

CAPITAL GAINS

	1968	1969	1970
Sale of M.I.M. Stock	$4,487,203	$2,230,370	$
Sale of Cia Minera de San Asidro y Aneyas stock	(645,817)		
Sale of Hecla Stock	3,753,251		141,098
Sale of U.S. Bonds (includes Federal Land Bank bonds)	118,906	81,406	
Sale of State & Local Bonds and notes	(1,723)	113,950	
Sale of Land, Buildings & Equipment**	16,232	98,089	51,952
Sale of U.S. Treasury Bonds			302,187
Sale of Connecticut 2-¼% Bonds			16,844
Sale of General Cable Stock			45,482,303
Sale of Zinc Industrial, S.A.			406,207
TOTALS	$7,728,052*	$2,523,815*	$46,400,591*

* This is also reported on the ASARCO federal returns.

** These represent Section 1245 recapture sales of property used in the business and are reported as ordinary income.

DIVIDENDS

		1968	1969	1970
Federated Metals of Canada	UNITIZED	$ None	$ None	$ None
ASARCO Mercantile	UNITIZED	12,500	15,000	140,000
Enthone, Inc.	UNITIZED	340,000	400,000	940,000
Int'l. Metal Co.	UNITIZED	50,000	200,000	
Lone Star Lead	UNITIZED	80,000	80,000	160,000
No. Peru Mining Corp.	UNITIZED	1,750,000	2,450,000	1,750,000
Compania American Smelting		15,687	26,385	
Lake Asbestos of Quebec, Ltd.		1,120,670	2,525,000	2,475,000
ASARCO Int'l. Corp.		70,000	80,000	135,000
So. Peru Copper Corp.		25,787,904	32,234,880	18,132,120
M.I.M. Holdings, Ltd.		9,661,070	20,466,130	33,647,396
ASARCO Mexicana, S.A.		1,882,918	1,882,918	1,882,918
General Cable		5,818,308	5,333,449	2,100,763
Revere Copper		2,814,444	2,814,444	2,345,370
Hecla Mining		91,729	46,242	11,561
Kennecott Copper Corp.		243,908	285,490	283,280
Phelps Dodge		269,850	300,690	323,820
Cia Minera de San Asidro y Aneyas, S.A.		50,557	-0-	-0-
Cia. Metalurgia Mex.		337,500	300,000	330,000
Japan Metal Finishing		8,454	6,081	11,383
Zinc Ind. S.A.		131,527	40,993	86,359
Purnix Enthone, S.A.			24,126	
Apache Power		5,600	7,600	8,000
TOTALS		$50,542,626*	$69,519,428*	$64,762,970*

* Total as shown in Federal Return for ASARCO

INTEREST

	1968	1969	1970
U.S. Government Securities	$1,182,989	$1,749,007	$2,239,199
United Park City Notes	12,000	12,000	12,000
Eisma Notes (sale of ASARCO Mexicana stock)	506,000	363,000	242,000
State and Local Bonds	330,489	672,635	111,023
Federated Metals of Canada, Ltd.		132,092	260,854
Revere Copper and Brass 5-¼% convertible debentures	1,251,965	1,251,965	1,251,965
N.Y. & Honduras Mining Co. Notes	24,559		
Bank Interest (fixed deposits)	63,306		
U.S. Reduction Corp. Notes		68,861	132,690
Sunshine Mining Company Notes		20,277	
Clayton Silver Mines Notes			25,375
Interest in connection with General Cable Sale			1,051,004
Neptune Gold Mining Note			4,673
Moran Notes (sale of Los Angeles plant)			56,250
Tax Refunds		17,579	329,296
Other Marketable Securities *	887,565	1,590,027	1,191,495
Other Interest Income	24,094	29,293	111,900
TOTALS	$4,282,917	$5,906,736	$7,019,724

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* *Other Marketable Securities:*			
Bankers Acceptances	$ 135,568	$ 360,833	$ 98,952
Time Certificates of Deposit	83,007	61,076	347,376
Commercial Paper Notes	668,990	1,168,118	746,402
Less amortization (time certificate deposits)	$ 887,565	$1,590,027	$1,192,760 (1,265)
TOTAL ABOVE	$ 887,565	$1,590,027	$1,191,495

12. ASARCO is incorporated in the state of New Jersey.

13. ASARCO's commercial domicile is the state of New York.

14. All corporate stock, bonds and other evidence of indebtedness owned by ASARCO are physically sited in New York.

DATED this 29th day of January, 1975.

CLEMONS, COSHO, HUMPHREY & SAMUELSEN

By: /s/ PHILIP E. PETERSON
Philip E. Peterson

By: /s/ R. MICHAEL SOUTHCOMBE
R. Michael Southcombe

Attorneys for American Smelting and Refining Company

STATE OF IDAHO

By: /s/ THEODORE V. SPANGLER, JR.
Theodore V. Spangler, Jr.

Attorney for State Tax Commission, State of Idaho

STATE OF IDAHO
STATE TAX COMMISSION
317 Main Street P.O. Box 3
Boise, Idaho

NOTICE OF DEFICIENCY DETERMINATION

Date March 27, 1973

To American Smelting & Refining Company
and Subsidiaries
120 Broadway
New York, New York 10005

In accordance with the provisions of Sec. 63-3045, Idaho Code, YOU ARE HEREBY NOTIFIED that the State Tax Commission has determined a deficiency in respect to the income taxes owed by you under the Idaho Income Tax Act for the year(s) and in the amount(s) as follows:

Year	Income Tax	Penalty	Interest	Total
1967	$ 1,938.86		$ 586.51	$ 2,525.37
1968	92,471.88	$4,623.59	22,424.43	119,519.90
1969	111,292.44	5,564.62	20,310.87	137,167.93
1970	121,750.76	6,087.54	14,914.47	142,752.77
				$401,965.97

The computations underlying and the reasons for said deficiency are set out in the attached Form 402, "Statement of Deficiency or Overassessment," which, by reference thereto, is incorporated herein.

YOU ARE FURTHER NOTIFIED that if you intend to protest this determination of deficiency you have thirty (30) days from the date this notice of deficiency was mailed or until April 26, 1973 to:

1. File a protest seeking redetermination thereof with the State Tax Commission at its offices at 317 Main Street, P.O. Box 36, Boise, Idaho 83707;

2. File a complaint in the District Court of Ada County or the County in which the taxpayer resides seeking redetermination thereof.

If no protest is filed with the State Tax Commission or if no complaint is filed with a District Court of this State within the time limits prescribed above, said deficiency becomes final; is due and payable; and action for collection of the above amount will be taken in accordance with law.

This deficiency may be paid immediately without awaiting formal assessment, notice and demand. Immediate payment will avoid additional interest being assessed which accrues at the rate of 6% per annum. Payment of this deficiency will not preclude the right of protest if such protest is made in accordance with the procedure and time limits prescribed above.

STATE TAX COMMISSION
INCOME TAX DIVISION
By _____
Title Corporation Auditor

STATE OF IDAHO STATE TAX COMMISSION

STATEMENT OF DEFICIENCY OR OVERASSESSMENT

TAXPAYER: American Smelting & Refining Company Serial No. 5192

Form 402 Rev. 9/69	ADJUSTMENTS TO INCOME—CORPORATIONS	Year/Period Ended 1967
Taxable income reported on return or as adjusted		$
Additional income and allowable deductions:		
1. Adjustments by revenue agent—net	$1,454,078	
Less: adjustment to state income taxes	(22,967)	
Less: adjustment to dividends—Mount Isa Mines Ltd.	202,411	
Additional apportionable income	1,633,522	
Idaho apportionment factor	1.9782%	32,314.33

Explanation of Items:

1. Adjustments by Internal Revenue Service applicable to Idaho.

Corrected taxable income	$32,314.33

COMPUTATION OF INCOME TAX—CORPORATIONS

Corrected income tax liability	$
Less—original tax paid on return or as previously adjusted	
Additional assessment	1,938.86
Interest at 6% from 4-15-68 to 4-30-73	586.51
TOTAL	$ 2,525.37

Date March 27, 1973

57a

STATE OF IDAHO REVISED STATE TAX COMMISSION

STATEMENT OF DEFICIENCY OR OVERASSESSMENT

TAXPAYER: American Smelting & Refining Company & Subsidiaries Serial No. 9-3388

Form 402 Rev. 9/69	ADJUSTMENTS TO INCOME—CORPORATIONS		Year/Period Ended 1968
Taxable income reported on return or as adjusted			$
Additional income and allowable deductions:			
1. Combined income per federal return			
American Smelting & Refining		$63,710,051	
Federated Metals Canada Ltd.		333,379	
ASARCO Mercantile Company		31,630	
Enthone, Inc.		712,575	
International Metal Company		139,377	
Lone Star Lead Construction Corp.		95,173	
Northern Peru Mining		2,106,745	
Add: Revenue Agents adjustments—net			
American Smelting & Refining		(528,355)	
Enthone, Inc.		(100)	
Add: Schedule M Interest income		345,194	
Less: Premium amortization		(14,704)	
Add: State taxes based on income $722,431—$288,082		434,349	
Deduct: Intercompany dividends		(2,232,500)	
Foreign dividend gross-up		(3,640,25[illegible])	
50% capital gain excess over capital loss		(3,864,026)	
85% dividend credit on qualifying dividends (Hecla Mining)		(77,970)	
Revised income subject to apportionment		57,550,563	
2. Idaho apportionment factor		2.67799%	1,541,198
Corrected taxable income			$ 1,541,198

COMPUTATION OF INCOME TAX—CORPORATIONS

Corrected income tax liability	$ 92,471.88
Less—original tax paid on return or as previously adjusted	
Additional assessment	92,471.88
Penalty 5%, Idaho Code, Section 63-3046 & Regulation 46(a)	4,623.59
Interest at 6% from 4-15-69 to 4-30-73	22,424.43
TOTAL	$119,519.90

Date March 27, 1973

59a

STATE OF IDAHO REVISED STATE TAX COMMISSION

TAXPAYER: American Smelting & Refining Company & Subsidiaries Serial No. 9-3388

Form 402
Rev. 9/69

EXPLANATION OF ITEMS

Year/Period Ended
1968

1. The income of American Smelting & Refining Company, which has a business situs in the state of Idaho, is combined with these six wholly owned subsidiaries to arrive at Idaho apportionable income for the following reasons: The parent company, American Smelting & Refining Company (ASARCO), mines, mills, smelters, and refines in the United States and Canada, and is also engaged in the manufacture and sale of non-ferrous alloys. The six wholly owned subsidiaries are either engaged in similar operations or are conducting manufacturing or sales operations for the parent company. In addition ASARCO and its subsidiaries have interlocking officers and directors which enables ASARCO to control the subsidiaries' activities and major management decisions. Sales between the companies are numerous, and various services are provided either by the parent company or by subsidiaries specifically set up to render the services, including management, accounting, budgeting, tax preparation, exploration, research, purchasing, sales and insurance procurement.

2. Computation of Idaho apportionment factor:

Property factor	Everywhere 1967	Everywhere 1968	Idaho 1967	Idaho 1968	Percent
American Smelting & Refining Co.					
Inventories	128,414,103	142,485,441	920,224	615,522	
Add: Inventory located at mine in Idaho and not shipped to Montana plant due to strike			8,212,868		
Building, equipment, etc.	233,455,300	261,576,508	3,572,722	4,120,289	
Depletable assets	45,209,263	51,389,338			
Land	5,437,167	5,778,662	2,513,461	2,535,851	
Materials & supplies		13,331,400			
Total	412,515,833	474,555,349	15,219,275	7,271,622	
Federated Metals Canada Ltd.					
Inventories	2,281,864	2,634,317			
Buildings, equipment, etc.	2,544,267	2,566,635			
Total	4,826,131	5,200,952			
ASARCO Mercantile Co.					
Inventories	40,009				
Enthone, Inc.					
Inventories	484,638	470,309			
Buildings, equipment, etc.	1,530,496	1,568,737			
Land	345,011	345,011			
Supplies		141			
Total	2,360,145	2,384,198			

STATE OF IDAHO — REVISED — STATE TAX COMMISSION

TAXPAYER: American Smelting & Refining Company & Subsidiaries — Serial No. 9-3388

Form 402 Rev. 9/69 — EXPLANATION OF ITEMS — Year/Period Ended 1968

Computation of Property Factor—continued	Everywhere 1967	Everywhere 1968	Idaho 1967	Idaho 1968	Percent
International Metal Co.					
Inventories	905,500	2,017,800			
Buildings, equipment, etc.	3,162	3,162			
Total	908,662	2,020,962			
Lone Star Lead Construction Co.					
Inventories	156,246	13,773			
Buildings, equipment, etc.	4,683	4,683			
Land		1,178			
Supplies	4,586	5,901			
Total	165,515	25,535			
Northern Peru Mining					
Inventories	3,568,658	2,968,510			
Buildings, equipment, etc.	8,379,599	8,551,902			
Depletable assets	2,126,057	2,126,057			
Land	115,195	115,195			
Total	14,189,509	13,761,664			
Grand Total	435,005,804	497,948,660	15,219,275	7,271,662	
Less: Construction in Progress					
ASARCO	(6,457,860)	(3,748,485)	(236,333)	(22,390)	
Enthone		(31,512)			
Adjust: Share of joint venture property	(7,941,219)	(16,930,040)			
Total end of year	420,606,725	477,238,623	14,982,942	7,249,272	
Total beginning of year		420,606,725		14,982,942	
		897,845,348		22,232,214	
Average owned property		448,922,674		11,116,107	
	1968		1968		
Capitalized rent expense					
American Smelting & Refining	5,513,784		478,999		
Federated Metals Canada	19,529				
International Metal	2,663				
Northern Peru	9,766				
Total annual rent expense	5,545,742		478,999		
Capitalized at 8 times		44,365,936		3,831,992	
Total Property		493,288,610		14,948,099	3.03029

STATE OF IDAHO — REVISED — STATE TAX COMMISSION

TAXPAYER: American Smelting & Refining Company & Subsidiaries — Serial No. 9-3388

Form 402
Rev. 9/69

EXPLANATION OF ITEMS — Year/Period Ended 1968

Computation of Payroll Factor	Everywhere	Idaho	Percent
American Smelting & Refining	74,167,340	2,918,634	
Grand Due Joint Venture	2,210,533		
Federated Metals Canada Ltd.	1,263,403		
ASARCO Mercantile Company	17,480		
Enthone, Incorporated	1,431,858		
International Metal Company	46,686		
Lone Star Lead Construction	289,219		
Northern Peru Mining Co.	1,812,509		
Total Payroll	81,239,028	2,918,634	3.59265
Computation of Revenue Factor			
American Smelting & Refining			
Sales	263,660,446	as reported 66,530	
Mine sales attributed to Idaho mines as agreed by taxpayer		4,777,799	
Dividends $50,542,626 less gross-up $3,640,255	46,902,371		
U.S. government interest	1,182,989		
Other interest	2,777,499		
Rents	62,496		
Royalties	887,552		
Misc. Income	2,989,638		
Less—intercompany sales to International Metals	(5,944,111)		
Federated Metals Canada Ltd.	14,225,938		
ASARCO Mercantile Company	1,918,961		
Enthone, Inc.	5,796,139		
International Metal Co.	5,959,393		
Lone Star Lead Construction	488,931		
Northern Peru Mining	2,407,133		
	343,315,375	4,844,329	1.41104
Total percent			8.03398
Average percent—Idaho apportionment factor			2.67799

STATE OF IDAHO REVISED STATE TAX COMMISSION

STATEMENT OF DEFICIENCY OR OVERASSESSMENT

TAXPAYER: American Smelting & Refining Company & Subsidiaries Serial No. 70-2407

Form 402 Rev. 9/69	ADJUSTMENTS TO INCOME—CORPORATIONS		Year/Period Ended 1969
Taxable income reported on return or as adjusted			$
Additional income and allowable deductions:			
1. Combined income per federal return			
American Smelting & Refining Co.		$94,408,818	
Federated Metals Canada Ltd.		687,730	
ASARCO Mercantile Company		24,474	
Enthone, Incorporated		757,866	
International Metal Company		255,117	
Lone Star Lead Construction Corp.		158,972	
Northern Peru Mining		2,579,779	
Add: Schedule M interest income		679,030	
Less: Premium amortization		(6,395)	
Add: State taxes measured by income		1,010,333	
Deduct: Intercompany dividends		(3,145,000)	
Foreign dividend gross-up		(6,276,623)	
50% capital gain excess over capital loss		(1,271,079)	
85% dividend credit on Hecla dividends		(39,305)	
Revised income subject to apportionment		89,823,717	
2. Idaho apportionment factor		2.53246%	2,274,750
Corrected taxable income			$ 2,274,750

COMPUTATION OF INCOME TAX—CORPORATIONS

Corrected income tax liability	$136,485.00
Less—original tax paid on return or as previously adjusted	25,192.56
Additional assessment	111,292.44
Penalty 5%, Idaho Code, Section 63-3046 & Regulation 46(a)	5,564.62
Interest at 6% from 4-15-70 to 4-30-73	20,310.87
TOTAL	$137,167.93

STATE OF IDAHO

REVISED

STATE TAX COMMISSION

TAXPAYER: American Smelting & Refining Company & Subsidiaries

Serial No. 70-2407

Form 402
Rev. 9/69

EXPLANATION OF ITEMS

Year/Period Ended
1969

1. The income of American Smelting & Refining Company, which has a business situs in the state of Idaho, is combined with these six wholly owned subsidiaries to arrive at Idaho apportionable income for the following reasons: The parent company, American Smelting & Refining Company (ASARCO), mines, mills, smelters, and refines in the United States and Canada, and is also engaged in the manufacture and sale of non-ferrous alloys. The six wholly owned subsidiaries are either engaged in similar operations or are conducting manufacturing or sales operations for the parent company. In addition ASARCO and its subsidiaries have interlocking officers and directors which enables ASARCO to control the subsidiaries' activities and major management decisions. Sales between the companies are numerous, and various services are provided either by the parent company or by subsidiaries specifically set up to render the services, including management, accounting, budgeting, tax preparation, exploration, research, purchasing, sales and insurance procurement.

2. Computation of Idaho apportionment factor:

Property factor

	Everywhere		Idaho		Percent
	1968	1969	1968	1969	
American Smelting & Refining Co.					
Inventories	142,485,441	154,615,834	615,522	444,736	
Buildings, equipment, etc.	261,570,508	272,672,939	4,120,289	9,679,056)	
Depletable assets	51,389,338	57,400,000		)	
Land	5,778,662	6,129,568	2,535,851	)	
Triangle Mine				13,095	
Materials & supplies	13,331,400	13,944,900			
Total	474,555,349	504,763,241	7,271,662	10,136,887	
Federated Metals Canada Ltd.					
Inventories	2,634,317	2,623,100			
Buildings, equipment, etc.	2,566,635	2,586,960			
Total	5,200,952	5,210,060			
Enthone, Inc.					
Inventories	470,309	505,322			
Buildings, equipment, etc.	1,568,737	1,729,427			
Land	345,011	341,481			
Supplies	141	136			
Total	2,384,198	2,576,366			
International Metal					
Inventories	2,017,800	1,116,044			
Buildings, equipment, etc.	3,162	4,413			
Total	2,020,962	1,120,457			
Lone Star Lead Construction Corporation					
Inventories	13,773	52,864			
Buildings, equipment, etc.	4,683	5,867			
Land	1,178				
Supplies	5,901	5,845			
Total	25,535	64,576			

STATE OF IDAHO REVISED STATE TAX COMMISSION

TAXPAYER: American Smelting & Refining Company & Subsidiaries Serial No. 70-2407

Form 402
Rev. 9/69

EXPLANATION OF ITEMS

Year/Period Ended 1969

Computation of Property Factor—continued	Everywhere 1968	Everywhere 1969	Idaho 1968	Idaho 1969	Percent
Northern Peru Mining					
Inventories	2,968,510	3,238,381			
Buildings, equipment, etc.	8,551,902	8,689,518			
Depletable assets	2,126,057	2,126,057			
Land	115,195	115,195			
Total	13,761,664	14,169,151			
Grand Total	497,948,660	527,903,851	7,271,662	10,136,887	
Adjustments					
Less: Construction in progress					
ASARCO	(3,748,485)	(3,726,621)	(22,390)	(7,465)	
Enthone	(31,512)	(16,093)			
Less: Adjustment required to adjust share of joint venture property	(16,930,040)	(16,912,298)			
Total end of year	477,238,623	507,248,839	7,249,272	10,129,422	
Total beginning of year		477,238,623		7,249,272	
		984,487,462		17,378,694	
Average owned property		492,243,731		8,689,347	
	1969		1969		
Capitalized rent expense					
ASARCO	7,135,773		800,295		
Federated Metals—Canada	18,971				
International Metal	2,763				
Northern Peru	9,678				
Total annual rent expense	7,167,185		800,295		
Capitalized at 8 times		57,337,480		6,402,360	
Total property		549,581,211		15,091,707	2.74604
Computation of Payroll Factor					
American Smelting & Refining		92,117,371		3,458,589	
Grand Due Joint Venture		1,331,929			
Federated Metals Canada, Ltd.		1,341,718			
Enthone, Incorporated		1,387,102			
International Metal Company		45,371			
Lone Star Lead Construction Corp.		301,726			
Northern Peru Mining		2,217,339			
Total Payroll		98,742,547		3,458,589	3.50263

STATE OF IDAHO REVISED STATE TAX COMMISSION

TAXPAYER: American Smelting & Refining Company & Subsidiaries Serial No. 70-2407

Form 402 Rev. 9/69	EXPLANATION OF ITEMS		Year/Period Ended 1969	
Computation of Revenue Factor	Everywhere 1969		Idaho 1969	Percent
American Smelting & Refining Co.				
Sales	347,637,780	as reported	71,929	
Mines sales attributed to Idaho mines as agreed by taxpayer			5,959,447	
Dividends $69,519,428 less gross-up $6,276,623	63,242,805			
U.S. Government interest	1,749,007			
Other interest	3,528,901			
Rents	62,385			
Royalties	940,244			
Misc. income	3,812,195			
Less: Intercompany sales	(11,613,799)			
Federated Metals Canada, Ltd.	16,209,913			
ASARCO Mercantile Company	1,163,699			
Enthone, Inc.	7,034,812			
International Metals Co.	11,786,290			
Lone Star Lead Construction	372,041			
Northern Peru Mining	1,266,287			
Total Gross Revenue	447,192,560		6,031,376	1.34872
Total Percent				7.59739
Average Percent, Idaho apportionment factor				2.53246

STATE OF IDAHO — STATE TAX COMMISSION

STATEMENT OF DEFICIENCY OR OVERASSESSMENT

TAXPAYER: American Smelting & Refining Company & Subsidiaries — Serial No. 71-2922

Form 402 Rev. 9/69	ADJUSTMENTS TO INCOME—CORPORATIONS		Year/Period Ended 1970
Taxable income reported on return or as adjusted			$
Additional income and allowable deductions:			
1. Combined income per federal return			
American Smelting & Refining Co.		$119,750,988	
Federated Metals Canada, Ltd.		81,303	
ASARCO Mercantile Company		20,234	
Enthone, Incorporated		430,921	
International Metal Company		251,379	
Lone Star Lead Construction Corp.		210,347	
Northern Peru Mining		1,640,411	
Add: Schedule M interest income		114,623	
Less: Premium amortization		(3,600)	
Add: State taxes based on income		1,067,566	
Deduct: Intercompany dividend		(2,990,000)	
Foreign dividend gross-up		(8,522,350)	
50% capital gain excess over capital loss		(23,213,763)	
85% dividend credit on Hecla dividends		(9,827)	
Net income subject to apportionment		88,828,232	
2. Idaho apportionment factor		2.43430%	2,162,346
Corrected taxable income			$ 2,162,346

COMPUTATION OF INCOME TAX—CORPORATIONS

Corrected income tax liability	$129,740.76
Less—original tax paid on return or as previously adjusted	7,990.00
Additional assessment	121,750.76
Penalty 5%, Idaho Code, Section 63-3046 & Regulation 46(a)	8,887.54
Interest at 6% from 4-15-71 to 4-30-73	14,914.47
TOTAL	$142,752.77

Date March 27, 1973

STATE OF IDAHO — STATE TAX COMMISSION

TAXPAYER: American Smelting & Refining Company & Subsidiaries — Serial No. 71-2922

Form 402
Rev. 9/69

EXPLANATION OF ITEMS

Year/Period Ended 1970

1. The income of American Smelting & Refining Company, which has a business situs in the state of Idaho, is combined with these six wholly owned subsidiaries to arrive at Idaho apportionable income for the following reasons: The parent company, American Smelting & Refining Company (ASARCO), mines, mills, smelters, and refines in the United States and Canada, and is also engaged in the manufacture and sale of non-ferrous alloys. The six wholly owned subsidiaries are either engaged in similar operations or are conducting manufacturing or sales operations for the parent company. In addition ASARCO and its subsidiaries have interlocking officers and directors which enables ASARCO to control the subsidiaries' activities and major management decisions. Sales between the companies are numerous, and various services are provided either by the parent company or by subsidiaries specifically set up to render the services, including management, accounting, budgeting, tax preparation, exploration, research, purchasing, sales and insurance procurement.

2. Computation of Idaho apportionment factor:

Property factor	Everywhere 1969	Everywhere 1970	Idaho 1969	Idaho 1970	Percent
American Smelting & Refining Co.					
Inventories	154,615,834	205,344,661	444,736	630,569	
Buildings, equipment, etc.	272,672,939	303,020,543	9,679,056	12,035,605	
Depletable assets	57,400,000	71,145,901			
Land	6,129,568	11,979,294			
Triangle Mine			13,095	13,095	
Material & supplies	13,944,900	15,335,000			
Total	504,763,241	606,825,399	10,136,887	12,679,269	
Federated Metals Canada Ltd.					
Inventories	2,623,100	2,397,325			
Buildings, equipment, etc.	2,586,960	2,585,065			
Total	5,210,060	4,982,390			
Enthone, Inc.					
Inventories	505,322	557,561			
Buildings, equipment, etc.	1,729,427	1,756,994			
Land	341,481	341,481			
Supplies	136	136			
Total	2,576,366	2,656,172			
International Metal Co.					
Inventories	1,116,044	819,064			
Buildings, equipment, etc.	4,413	6,217			
Total	1,120,457	825,281			
Lone Star Lead Construction Corp.					
Inventories	52,864	44,287			
Buildings, equipment, etc.	5,867	7,016			
Supplies	5,845	9,866			
Total	64,576	61,169			

STATE OF IDAHO REVISED STATE TAX COMMISSION

TAXPAYER: American Smelting & Refining Company & Subsidiaries Serial No. 71-2922

Form 402
Rev. 9/69

EXPLANATION OF ITEMS

Year/Period Ended 1970

Computation of Property Factor—continued	Everywhere 1969	Everywhere 1970	Idaho 1969	Idaho 1970	Percent
Nortern Peru Mining					
Inventories	3,238,381	3,328,541			
Buildings, equipment, etc.	8,689,518	8,788,917			
Depletable assets	2,126,057	2,126,057			
Land	115,195	10,013			
Total	14,169,151	14,253,528			
Grand Total	527,903,851	629,603,939	10,136,887	12,679,269	
Less: Construction in progress					
ASARCO	(3,726,621)	(2,319,283)	(7,465)	(23,931)	
Enthone	(16,093)	(25,028)			
Property acquired 11/23/70		(28,211,513)			
Adjustment required to adjust share of joint venture property	(16,912,298)	4,553,889			
Joint venture put in use 11/1/70		(16,912,298)			
Total end of year	507,248,839	586,689,706	10,129,422	12,655,338	
Total beginning of year		507,248,839		10,129,422	
		1,093,938,545		22,784,760	
Average owned property		546,969,272		11,392,380	
Capitalized rent expense	1970		1970		
American Smelting & Refining	6,577,601		1,130,551		
Federated Metals—Canada	17,222				
International Metal	2,943				
Northern Peru	25,369				
Total annual rent expense	6,623,135		1,130,551		
Capitalized at 8 times		52,985,080		9,044,408	
Add: Property acquired 11/23/70 weighed		2,350,959			
Property put into use 11/1/70		2,818,716			
Total property		605,124,027		20,436,788	3.37729

794

STATE OF IDAHO — REVISED — STATE TAX COMMISSION

TAXPAYER: American Smelting & Refining Company & Subsidiaries — Serial No. 71-2922

Form 402
Rev. 9/69

EXPLANATION OF ITEMS

Year/Period Ended 1970

Computation of Payroll Factor:	Everywhere 1970	Idaho 1970	Percent
American Smelting & Refining	98,112,241	3,238,074	
Grand Due Joint Venture	3,367,697		
Federated Metals Canada Ltd.	1,726,545		
Enthone, Incorporated	1,760,063		
International Metal Company	54,452		
Lone Star Lead Construction	461,723		
Northern Peru Mining	2,428,351		
Total Payroll	107,911,072	3,238,074	3.00069
Computation of Revenue Factor:			
American Smelting & Refining Co.			
Sales	348,625,070	as reported 177,120	
Mine sales attributed to Idaho mines as agreed by taxpayer		4,378,966	
Dividends $64,762,970 less gross-up $8,522,350	56,240,620		
U. S. Government interest	2,239,199		
Other interest	4,682,474		
Rents	61,905		
Royalties	1,169,110		
Misc. income	4,004,016		
Sale of General Cable stock	48,688,104		
Federated Metals Canada Ltd.	17,121,672		
ASARCO Mercantile Company	2,064,350		
Enthone, Inc.	6,898,180		
International Metal Co.	196,336		
Lone Star Lead Construction	384,503		
Northern Peru Mining	210,282		
	492,585,821	4,556,086	.92493
Total percent			7.30291
Average percent, Idaho apportionment factor			2.43430

MTC AUDIT REPORT

AMERICAN SMELTING AND REFINING COMPANY
FEIN 13-4924440

The subject taxpayer, hereinafter referred to as ASARCO, is engaged in two areas of operation:

1. Primary Metals—mining, milling, smelting, and refining non-ferrous metals
2. Non-Ferrous Alloys—manufacture and sale

For simplicity, each operation is discussed separately.

Primary Metals

ASARCO operates mines, mills, smelters, and refineries in the United States and Canada. In South and Central America, subsidiaries are engaged in mining and smelting operations.

Primary metal ores extracted from mines are lead, copper, zinc, gold, and silver. The ore extracted from company mines is shipped to company smelters and, in turn, is shipped to company refineries and ultimately sold by the New York sales office.

In addition to smelting and refining its own ore, ASARCO treats ore for independent miners on a toll basis. The taxpayer also purchases ore from independent mine operators which it treats and sells for its own account.

By-products resulting from smelting and refining operations are sold by the taxpayer's sales office in New York or by the local plant managers.

ASARCO has mines in Colorado, Washington, Arizona, New Mexico, Idaho, and Canada. Company smelters and/or refineries are located in Texas, Maryland, Colorado, Montana, Missouri, California, Nebraska, Arizona, New Jersey, and Washington.

Non-Ferrous Alloys

Through its Federated Metals Division, ASARCO is engaged in the manufacture and sale of non-ferrous alloys such as aluminum alloys, bismuth alloys, brass ingot, caulking lead, copper anodes, magnesium alloys, nickel alloys, tin, and zinc dust, to name just a few of more than 75 different products.

Federated Metals has plants in Texas, New Jersey, California, Oklahoma, and Indiana. Its sales offices are located in Baltimore, Boston, Cincinnati, Cleveland, Detroit, Milwaukee, Philadelphia, Rochester, and St. Louis. In addition, each plant has sales personnel attached to it who call on customers to solicit orders.

On November 23, 1970, ASARCO entered into another field of operation, the mining and selling of coal. It acquired four mining properties from Peabody Coal Company, a subsidiary of Kennecott Copper, for $24,283,000 in cash and a reserved production payment obligation of $3,000,000. The properties are located in Illinois and are operated as the Midland Coal Company, a division of ASARCO.

Related Companies

The following companies are wholly-owned subsidiaries of ASARCO

1. *Federated Metals of Canada*

This company is located in Canada and is engaged in the smelting, refining, and sale of secondary metals similar to the operations of the Federated Metals Division of ASARCO.

2. *ASARCO Mercantile Company*

This company is located in New York City and is engaged in the purchase and sale of machinery and equipment for ASARCO subsidiaries.

3. *Enthone, Inc.*

This company is headquartered in Westhaven, Connecticut. It has plants in Connecticut, Illinois, and Ohio which are engaged in the manufacture and sale of metal finishing chemicals and supplies. Sales are made on a regional basis.

4. *International Metal Company*

This company conducts a sales operation exclusively for ASARCO. It has offices in New York City and Brussels, Belgium, where it takes orders for metals to be delivered to foreign customers.

5. *Lone Star Lead Construction Corporation*

This company is located in Houston, Texas and is engaged in lining tanks with lead where corrosive products are used. Its customers are primarily in the chemical industry. Company operates throughout the United States.

6. *Northern Peru Mining Corporation*

This company is located in Peru and is engaged in mining for copper, lead, silver, and zinc. Its production is sold primarily to ASARCO.

7. *ASARCO Australia*

8. *ASARCO Developments*

9. *ASARCO Exploration Company*

These three companies are engaged in exploration activities for ASARCO.

10. *Compania American Smelting, S. A.*

This is an office in Chile that purchases ore for ASARCO units.

11. *Lake Asbestos of Quebec*

This company is engaged in extracting and processing asbestos fibres in Canada. The company sells its finished products throughout the world.

12. *ASARCO International Corporation*

This company sells the asbestos fibres of Lake Asbestos all over the world.

The following companies are owned by ASARCO, in which the ownership is less than 100% but more than 50%:

1. *Southern Peru Copper Corporation—51.5% owned by ASARCO*

This subsidiary is an American corporation whose activities are confined to Peru. This company operates an open pit copper mine and mill at Toquepala in southern Peru and a smelter, power plant and port at Ilo on the seacoast. The other stockholders are Phelps Dodge, 16%; Newmont Mining, 10.25%; and Cerro Corporation, 22.25%.

The end product of this company is blister cooper, which it sells to Southern Peru Copper Sales Corporation and to the stockholders in proportion to their stock ownership. The sales to the stockholders are made after the Southern Peru Sales Corporation commitments are satisfied.

2. *Southern Peru Copper Sales Corporation—51.5% owned by ASARCO*

This company sells blister copper which it purchases from Southern Peru Copper Corporation. The sales are made by the ASARCO sales office in New York, for which that office earns a sales commission. Sales are generally made to foreign customers.

The stock ownership in this company is the same as in Southern Peru Copper Corporation.

3. *M.I.M. Holdings Ltd.—52.7% owned by ASARCO*

This company was formerly known as Mount Isa Mines Ltd. M.I.M. encompasses a complex of mining, mill-

ing, smelting, and refining operations for copper, lead, zinc, and silver in Australia and a lead and silver refinery in England.

4. *Neptune Gold Mining Company—51.8% owned by ASARCO*

This company conducts a gold mining operation in Nicaragua. The ore is shipped to ASARCO plants in the United States.

The following companies are owned less than 50% by ASARCO:

1. *ASARCO Mexicana, S. A.—49% owned by ASARCO*

This company mines and smelts lead and copper in Mexico. It is also engaged in coal mining in that country. ASARCO provides this company with technical services, and it handles the company's sales outside of Mexico.

2. *Mexicana de Cobre, S. A.—49% owned by ASARCO Mexicana*

This company holds mineral lands in Mexico.

Unitary Business Operations

The examiner has considered the following wholly-owned companies to be engaged in a unitary business operation with ASARCO and is, therefore, recommending a combined report:

1. Federated Metals of Canada
2. ASARCO Mercantile Company
3. Enthone, Inc.
4. International Metal Company
5. Lone Star Lead Construction Corporation
6. Northern Peru Mining Corporation

In addition to the above companies, two 51.5% owned subsidiaries were deemed unitary and were combined only for those states in which ownership of less than 80% presents no problem. These subsidiaries are Southern Peru Copper Corporation and Southern Peru Copper Sales Corporation.

The following companies, though deemed unitary with ASARCO, were *not* included in the combined report because their relatively small operations would have minor tax effects. These companies are:

1. ASARCO Australia—exploration
2. ASARCO Developments—exploration
3. ASARCO Exploration—exploration
4. Neptune Gold Mining—mining
5. Compania American Smelting, S. A.—buying office

The unitary features present during this audit period are discussed below.

1. *Ownership*

ASARCO owns over 50% of the stock in the companies being combined and, thereby, is capable of exercising control over the companies' activities.

2. *Related Fields*

ASARCO, with its subsidiaries, conducts a vertically integrated non-ferrous metals operation. This is evidenced by the flow from the mines to the smelters to the refineries and ultimately to the sales made by the New York office.

3. *Interlocking Officers and Directors*

ASARCO and its subsidiaries have interlocking officers and directors, which enables ASARCO to control the major management decisions of each subsidiary.

4. *Flow of Product*

Sales between the companies were numerous. ASARCO sold metal to Federated Metals of Canada, anywhere from $662,834 in 1967 to $1,053,588 in 1970. Federated Metals of Canada sold smaller amounts back to ASARCO, ranging from $130,253 to $349,403. These amounts represented approximately 1% of Federated's sales.

Lone Star Lead Construction Corporation purchased most of its lead requirements from ASARCO.

Northern Peru Mining Corporation sold practically all of its ore production to ASARCO.

Enthone purchased approximately 16% of its material from ASARCO and sold about 4.5% of its total sales to its parent.

Southern Peru Copper sold directly to ASARCO about 35% of its total sales. Sales to ASARCO were as follows:

1967	$44,096,604
1968	$49,824,905
1969	$64,604,211
1970	$56,410,642

Sales made to Southern Peru Copper Sales were as follows:

1967	$38,885,755
1968	$39,522,877
1969	$45,742,273
1970	$42,921,408

It is apparent from the above that the companies supplied markets to each other—in some cases very substantial markets, and in other instances minor markets.

5. *Flow of Services*

There were various services provided the ASARCO group either by the parent company or by subsidiaries specifically set up to render the services.

a. ASARCO Mercantile bought and sold equipment and machinery for all ASARCO subsidiaries except M.I.M.

b. International Metals Company acted as a foreign sales agent solely for ASARCO.

c. Central exploration service is provided the ASARCO companies either by the exploration division of ASARCO or its exploration subsidiaries.

d. ASARCO's sales office in New York handles the sales of Southern Peru.

e. ASARCO's tax department prepares or supervises the preparation of tax returns for all United States companies.

f. There is a central research department working with programs closely associated with exploration, ore benefication, smelting, refining, product application, and product development. The findings of this department are available to all members of ASARCO.

Enthone conducts its own research center.

g. Central insurance department secures property and casualty insurance coverage for ASARCO and the wholly-owned North American companies.

h. Accounting and budgeting is centrally provided by ASARCO for its wholly-owned subsidiaries except for Enthone.

i. ASARCO's audit staff examines the operations of the subsidiaries with the exception of Southern Peru and M.I.M. This enables ASARCO to know whether the subsidiaries are operating along the lines set down by its management.

In addition to the above unitary factors, the following factors existed between Federated Metals of Canada and ASARCO:

ASARCO charged Federated Metals for technical, managerial, engineering, and scientific services. During the audit period, the charges were as follows:

1967	$22,856
1968	$12,882
1969	$18,514
1970	$16,432

In 1969, ASARCO provided financing for Federated Metals. The interest charges were as follows:

1969	$142,213
1970	$261,253

There were some minor amounts of sales handled by each company for the other.

The unitary factors between Southern Peru and ASARCO not mentioned before are as follows:

ASARCO charged Southern Peru for technical services, loaned Southern Peru technical personnel, and had the right to name 6 of 13 directors. The thirteenth director was agreed upon by all stockholders jointly.

Companies not combined and not deemed unitary were M.I.M., Lake Asbestos, and ASARCO International.

M.I.M., though operating in a related field and controlled by ASARCO, did not have significant unitary factors to warrant combining it with its parent company. Sales to ASARCO were less than 1% of M.I.M. total sales. There were sales made by ASARCO for M.I.M. for which a commission was paid but, again, was not significant.

Lake Asbestos and ASARCO International, though unitary with each other, were not considered unitary with ASARCO. They operate in an unrelated field. There was no flow of product; mining and processing know-how differed; customers were different; no joint sales force existed; and there was no sharing of facilities. There were some unitary factors such as ownership and some management services, but not enough to consider combining these two companies with ASARCO.

RAR Adjustments

IRS has completed its examination of the years 1967 and 1968. Their adjustments have been incorporated into our computation of income.

The years 1969 and 1970 are presently under audit.

Adjustments to Income

The discussion on business income is general and will not, at times, pertain to an individual state because of its laws or interpretation of business income.

There were many adjustments made to income for the years 1967 through 1970, and these are discussed below.

ASARCO filed its returns, reporting its operations only and using formula to apportion income. This auditor has revised income to reflect combined reporting for the years 1967 through 1970.

The taxpayer treated all passive income as non-business. The auditor has reversed this treatment and was guided by the Multistate Tax Compact Regulations adopted in 1971. The auditor took income as reported for federal purposes, thereby avoiding the need to make the adjustments to restore the passive income to business income.

Dividend Income

Dividends were primarily intercompany, mostly coming from Mount Isa and Southern Peru Copper. Dividends from General Cable and Revere Copper were treated as business because these two companies were very large customers of ASARCO. General Cable purchased each year between $30,700,000 to $45,791,231 in metal from ASARCO; and Revere purchased between $16,374,674 to $29,294,217 each year. Both companies also had quite a bit of toll treatment done on their metal concentrate by ASARCO.

Intercompany dividends from companies included in the combined report have been eliminated from income.

Interest Income

Interest income was treated as business income. Interest from U. S. obligations was removed from income where the state imposed an income tax instead of a franchise tax.

Interest income from customers' notes or bonds was treated as business income.

Interest on notes from U. S. Reduction for the purchase of the Federated plant in Alton, Illinois was treated as business, as was the interest from notes taken on the sale of General Cable stock.

Schedule M interest income was also added back to business income, as was interest income from state and municipal bonds.

Interest on time certificates, bankers acceptances, and commercial paper was also treated as business income.

Rental Income

Rental income was treated as business income in all years. This income is, for the most part, from homesites rented to employees working near company mines and plants.

Royalty Income

Royalty income was treated as business income. This income accrues from two sources:

1. Mine Royalties—earned when the taxpayer leases a portion of its mineral land to outsiders
2. Patents—developed by the taxpayer's research department which are used in the taxpayer's business and which are also licensed to unrelated parties

Capital Gains and Losses

The gains and losses have been treated as business income. This category is composed of a number of items, each of which will be discussed separately.

1. *Fixed Assets (1231, 1245, and 1250 Assets)*

These are business assets used in the taxpayer's regular everyday business activities and, therefore, give rise to business income or loss when they are sold.

2. *Notes and Bonds*

These assets are primarily acquired with idle cash in order to earn a return while the funds are not needed. The holding period, mostly, is less than a year. The nature of these securities are U.S. Treasury notes and bonds, and state and municipal notes and bonds.

In 1967 a loss of $5,064,759 on a note taken in connection with the sale of stock of Compania Minera ASARCO, a 51% subsidiary, was allowed as a business loss.

3. *Sale of Securities*

Gains and losses on the sales of securities were picked up as business income where the stock was from a company that was engaged in a significant amount of business activity with the taxpayer.

In 1967 a $4,319,606 gain on the sale of Kennecott Copper stock was included in business income because Kennecott was a major customer of ASARCO until Kennecott opened its own smelters and refineries.

In 1968 and 1970 the gain on the sale of Hecla Mining stock was treated as business income. Part of the stock, 25,230 shares, was acquired from Hecla as payment for the Morning Mine it purchased from ASARCO. The balance of the shares was purchased in the open market and through stock splits.

In 1968 and 1969 the gains and losses on the sales of stocks in subsidiaries were included in business income.

In 1970 the taxpayer realized a gain of $45,482,303 on the sale of General Cable stock. This gain was treated as business income.

General Cable represented a large market for the taxpayer's metal and, in fact, purchased on average 6% of ASARCO's total sales. The auditor contends that ASARCO's motive in acquiring 34% of General Cable's stock was for business purposes. It was to insure itself of a market for its production of metal. ASARCO also voted its stock at annual meetings, thereby having a voice in General Cable's operations, including the company's purchasing policies.

In 1961, the Justice Department moved against ASARCO for its interest in both General Cable and Revere Copper, claiming violation of antitrust laws. In 1970 the company was finally forced to divest of its holdings in General Cable. The Justice Department's success in forcing ASARCO to divest points out that the acquisition was not purely investment, but business motivated.

Many large metal extraction companies also engage in fabricating. This gives them the ideal type of vertical integration, from the raw material to the marketable end

product for sale to the consumer. ASARCO did not directly enter the fabricating business on its own. It appears that ASARCO chose to get into this end of the business through control, though limited, of fabricating companies. Examples of this approach can be seen in ASARCO's purchase of Revere Copper common stock, which represents 33.4% ownership in that company plus $22,763,000 in 5½% convertible debentures. Also pointed out previously was the large holdings in General Cable, another fabricator, without its own source of metals.

Presently, ASARCO is limited in its relations with Revere Copper through an antitrust consent decree signed in March 1967. These limitations are as follows:

Limitations:

1. No common officers
2. ASARCO is forbidden to vote its stock
3. ASARCO is restrained from selling refined copper to Revere at prices more favorable than those quoted competitors of Revere
4. ASARCO is forbidden to acquire stock in any producer or seller of fabricated copper products.

A similar decree was signed in 1967 for ASARCO's holdings in General Cable.

APPORTIONMENT FACTORS—DENOMINATORS

Property Factor

Property was checked to balance sheets, property workpapers, and rent schedules; and revisions were required in all years.

The property was reported by the taxpayer at original cost without excluding construction in progress. Rents were reported differently in certain states. In states where the taxpayer paid little or nothing for mine leases, these

payments were treated as rents by the taxpayer, thereby increasing the denominator with little or no effect on the numerator. In a state where the lease payments were large, the taxpayer did not consider these payments as rents, thereby not increasing the numerator or the denominator. The overall effect was to keep the apportionment factor down in as many states as possible by interpreting the same payments in two different ways for apportionment purposes.

The auditor reviewed the mine lease agreements and considered all payments as rents. Therefore, all payments were capitalized at 8 times. Rents on facilities and personal property were reviewed, and no errors were noted.

Construction in progress was adjusted for all years examined. It was difficult to determine the exact amount of property under construction because the taxpayer would use certain parts of a facility already completed, although the rest of the facility may still be in the construction phase. It was decided to consider a facility no longer under construction if 70% of the cost had been expended. If less than 70% had been expended, then the entire facility was still deemed to be under construction. This approach appears to simplify a time consuming task that would not justify the amount of additional tax that might accrue.

The auditor used the construction cost budget to determine the 70%. These budgets showed each job in construction, the state where located, the estimated cost, and the cost expended to date.

The taxpayer included investment costs and construction in progress in valuing the joint venture property of Grand Due. The auditor used the Grand Due federal tax return, Form 1065, and computed the property of the venture and then computed taxpayer's share. The difference between the taxpayer's reported figures and the auditor's revised figures appears as an adjustment to property everywhere.

In 1970 two properties were placed into use—one on November 1, 1970; the other on November 23, 1970. The auditor weighted both properties for the first time used during 1970.

In addition to the above adjustments, the property was computed on a combined basis.

The auditor did not handle inventory in transit in the conventional way. Ordinarily, inventory in transit would be picked up in the numerator of the destination state. With the taxpayer, the problem was that only partial records were prepared for inventory in transit. There was no accountability for all the in-transit inventory, and the taxpayer said at this late date it would be extremely difficult to develop this data. For practical purposes, no consideration was given to inventory in transit. Inventory on plant books was treated as at the plant. For example, Plant A ships metal to Plant B for processing, but Plant B has not received or booked the metal. For audit purposes, the inventory would still be considered at Plant A until notification was received to remove the inventory from its books.

Payroll Factor

The only revision required to payroll was to place it on a combined basis. Payrolls were reported on the accrual basis. Payrolls of subsidiaries filing U. S. Federal returns were taken from the returns. In the case of foreign companies, payrolls are per books, converted into U. S. dollars.

Sales Factor

Sales proved to be mess. [sic] The taxpayer reports sales in two ways. Primary metal sales are reported on a margin basis, which records these sales on a service rendered theory. The revenue is attributed to each facility that had performed some work in processing the metal. Where the company handles each phase of processing from extracting ore to refining, the entire sale will be reflected. Where the

company purchases the ore, the revenue on a margin basis is lower than on a sales basis because the company records as revenue only the services it renders on the purchased metals.

Secondary metals are reported on a destination basis, as are by-product sales.

The taxpayer used two methods for reporting the sales denominator. In states where primary metal sales were not a factor, the taxpayer used gross sales in the denominator, thereby increasing the denominator anywhere from $280,000,000 to $379,000,000 without having to revise the numerator. In states where processing is rendered to the metals, the taxpayer did not attempt to gross up margin figures and, in some instances, claimed the service revenue was intercompany and eliminated the revenue from the numerator but not the denominator.

The taxpayer does not maintain records of gross sales on a destination basis. For federal tax purposes, it reports on a margin basis, too. Since the taxpayer elects to report on a margin basis for federal purposes, the auditor is using this method for apportionment purposes.

The auditor added to the revenue denominator all the passive income that was picked up as business income. In the case of sales of capital assets, the taxpayer elected not to report these sales. But in 1970, the auditor did include the sale of General Cable stock in the denominator because the profit picked up in income was approximately 92% of the sale. To ignore the sale in the denominator would, in the auditor's opinion, attribute more income to states than they would be entitled to tax.

The taxpayer raised a question about the elimination of intercompany sales to International Metal Company. If the sales of primary metal to International Metal were made from company-extracted ore, then the adjustment is correct. If the metal sales were made out of ore purchased

from outside sources, then the adjustment is overstated. Since the taxpayer could not distinguish the type of metal sales made, the auditor took the approach most beneficial to the states.

In states that provide the taxpayer with an 85% dividend deduction, the revenue everywhere was revised to give recognition for the deduction.

In addition to the above adjustments, the revenue factor was computed to reflect combined reporting. The revenue of the subsidiaries was taken from their federal income tax returns, except for Federated Metals of Canada which was taken per books.

The taxpayer is engaged in mining activities in Idaho. At Wallace it operates the highly profitable silver and copper mines known as Galena. There are a number of other locations in the State that are either under exploration or in development work. The ores extracted from the mines are shipped to company-owned smelters.

There are no other company activities in the State.

This examination covers the years 1968-69-70. The State originally informed the auditor that the 1967 year was open for audit; but the taxpayer produced a closing agreement for the years 1965-66-67, a copy of which is forwarded with this report. The only item open for 1967 is the RAR changes, which the auditor has picked up for billing.

Adjustments to Income—Schedule I

A number of revisions that pertain only to the Idaho return are discussed in this section of the report. These adjustments were required for the years 1968-69-70.

1. Taxes based on or measured by income has been added back to income.

2. The following items were eliminated from income:

a. foreign dividend gross up

b. 50% of capital gains excess over capital losses

c. 85% dividend credit on qualifying dividends

No other adjustments were made to income.

APPORTIONMENT FACTORS—NUMERATORS—SCHEDULE II-F

Property Factor

The Idaho property required adjustment for all years examined.

The taxpayer reported average property at original cost and rents at 8 times. Figures were tested to property workpapers, rent analyses, and metal balance sheets; and the following adjustments were required:

1. During 1967 and into the early part of 1968, the taxpayer experienced a strike at all of its domestic facilities; therefore, ore concentrate that usually would have been sent from suppliers located in Idaho remained at the suppliers' sites. Title to the ore concentrate passed to the taxpayer, and the dollar value of the ore was carried on the books of taxpayer's East Helena plant located in Montana. This inventory, amounting to $8,212,868, was deducted from the Montana property because it was physically located in Idaho. But when reviewing the Idaho property workpapers, it became apparent that the taxpayer had failed to include the inventory among its Idaho properties. This adjustment to property was made for 1967.

2. Taxpayer omitted a small piece of mineral property, called the Triangle mine, from the numerator for 1969 and 1970. This was added back to the numerator by the examiner.

3. The taxpayer did not exclude construction in progress from the numerator for the years 1967 through 1970. This adjustment is being made for these years, and a detailed discussion of the basis used to determine property under construction is given in the property everywhere section of this report.

4. Rents for the years 1968-69-70 required adjustment. The taxpayer capitalized mine royalty payments as rents for states in which it either paid small mine royalties or none at all. The obvious result was a decrease in the property factor ratio. In the case of Idaho, where mine royalties are high, something occurred in the taxpayer's reasoning. Mine royalties underwent a change in character; they were no longer treated as rents subject to capitalization at 8 times. The taxpayer simply ignored these mine leases in both the denominator and numerator. The net effect, of course, was to keep the property as low as possible.

The auditor has included mine royalties as rents for both the denominator and numerator in recomputing the property factor.

Payroll Factor

Payroll was checked to payroll analyses by state, and no revision was required.

Revenue Factor

Revenue was checked to the federal return's consolidating workpapers which reflect revenues earned by plant site, and a significant revision was required.

The taxpayer reported sales made into Idaho by the Federated Metals Division and some by-product sales made through the New York office.

Mine sales which are treated as service revenue for federal income tax purposes were not reported as Idaho revenue. The reason is that these sales were made to a company smelter and, therefore, were intracompany in nature and should have been eliminated. However, the method used by the taxpayer to record the sale of primary metals is a margin basis. This method records the revenue at each phase of production and attributes revenue to the plant providing the service, such as extracting ore, smelting, and refining.

Since the taxpayer chose this method to record its income and does not have records showing sales of primary metals on a destination basis, the auditor has revised the Idaho revenue to include the total sales made from the Idaho mines. The taxpayer has agreed to this revision, even though it results in higher taxable revenue to Idaho. This revision was made for the years 1968-69-70.

Statement of Taxpayer's Representative

The taxpayer has informed the auditor that it will protest the following proposed revisions:

1. Combined reporting
2. Including as business income dividends, interest income, rents, royalties, and gains on the sale of securities

Auditor's Recommendation

It is recommended that notices of proposed assessments be issued to ASARCO for the years 1968-69-70 in accordance with schedules attached.

Form 41

Return with your remittance to State Tax Commission P. O. Box 36, Boise, Idaho 83707

IDAHO CORPORATION INCOME TAX RETURN

1969

or of. taxable year beginning _____, 1969
and ending _____, 19___

IMPORTANT—All applicable lines and schedules must be filled in. If the lines on the schedules are not sufficient, see instructions

Please type or print

Name: American Smelting and Refining Company

Number and Street: 120 Broadway

City or Town and State: New York, New York

ZIP Code No.: 10005

Federal Employer's No.: 13-4924440

Idaho Employer's Withholding No.: 14141-73-20-45 U

Kind of Business: Non-ferrous metals

Federal Business Code No.: 3330

Incorporated in State of: New Jersey Year: 1899

Consolidated Return: Yes (See Statement A

If desired, attach copy of Federal Return (Form 1120) and copies of all supporting schedules, enter on Line 30 the corresponding amount from Line 30 of the Federal Return, and omit Lines 1 through 29.

GROSS INCOME	1 Gross receipts or gross sales 360,020,649 Less: Returns and allowances	12,382,869	347,637,780
	2. Less: Cost of goods sold (Schedule A) and/or operations (attach schedule)		138,261,883
	3 Gross profit		209,375,897
	4 Dividends (Schedule C)		69,519,428
	5 Interest on obligations of the United States and U. S. instrumentalities		1,749,007
	6 Other interest		3,528,901
	7 Gross rents		62,385
	8 Gross royalties		940,244
	9 Net gains (losses)—(separate Schedule D)		2,523,815
	10 Other income (attach schedule) Schedule A-1 Attached		(1,073,958)
	11 TOTAL income—Add lines 3 through 10		286,625,719
DEDUCTIONS	12 Compensation of officers (Schedule E)		1,344,130
	13 Salaries and wages (not deducted elsewhere)		
	14 Repairs (do not include capital expenditures)		25,821,925
	15 Bad debts (Schedule F if reserve method is used)		14,909
	16 Rents		1,251,914
	17 Taxes (Schedule B or other schedule)		16,629,849
	18 Interest		2,545,091
	19 Contributions (attach schedule—see instructions for limitation)		446,335
	20 Casualty or theft losses (attach schedule)		
	21 Amortization (attach schedule)		26,828
	22 Depreciation (Schedule G)		12,418,044
	23 Depletion		11,130,708
	24 Advertising		989,912
	25 (a) Pension, profit-sharing, stock bonus, annuity plans (attach Form 2950)		6,640,538
	(b) Other employee benefit plans (see instructions)		6,436,854
	26 Other deductions (attach schedule) Schedule K Attached		106,469,864
	27 TOTAL deductions on lines 12 through 26		192,216,901
	28 Taxable income before net operating loss deduction and special deductions (line 11 less line 27)		94,408,818
	29 Less: (a) Net operating loss deduction (see instructions—attach schedule)		
	(b) Special deductions (attach schedule)	35,124,375	35,124,376
	30 Federal taxable income (line 28 less line 29). Enter also on line 31, page 3		59,284,442

COMPUTATION OF TAX DUE OR REFUND

1 Net taxable income (line 37, page 3) $ 419,876 @ 6% — tax due	25,192.56
2 Credit for estimated tax paid	13,000.00
Tax Due	12,192.56
Overpayment	
3 Permanent Building Fund Tax (Applies to all corporations except "Tax Option" Corporations)	$10.00
4 TOTAL	12,202.56

SIGNATURE AND VERIFICATION (See Instructions)

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

CORPORATE SEAL

October 13, 1970 (Date) — (Signature of Officer) — R.J.Plumb,Jr. Treasurer

(Date) — (Signature of Preparer — Individual or Firm) — (Address)

105a

SCHEDULE A.—COST OF GOODS SOLD

(Where inventories are an income-determining factor)

1 Inventory at beginning of year	
2 Merchandise bought for manufacture or sale	
3 Salaries and wages — Schedule A Attached	
4 Other costs per books (Attach schedule)	
5 TOTAL	
6 Less: Inventory at end of year	
7 Cost of goods sold (enter here and on line 2, page 1)	

SCHEDULE B.—TAXES

Explanation	Amount
Schedule B Attached	
TOTAL (enter here and on line 17, page 1)	

SCHEDULE C.—INCOME FROM DIVIDENDS

1. Name of Declaring Corporation	2. Domestic Corporations Taxable Under Chapter 1, Internal Revenue Code*	3. Certain Preferred Stock of Public Utilities Taxable Under Chapter 1, Internal Rev. Code	4. Foreign Corporations	5. Other Corporations
Schedule C Attached				
TOTALS				

Total of columns 2, 3, 4, and 5 (enter here and on line 4, page 1)

*Except (a) dividends on certain preferred stock of public utilities which should be entered in column 3, and (b) dividends which should be entered in column 5, received from Cuba Trade Act corporation, from corporations to which section 931 applies, and from corporations exempt from tax under sections 501 and 521.

SCHEDULE D.—USE SCHEDULE D (FORM 1120)

SCHEDULE E.—COMPENSATION OF OFFICERS

See instructions for page 2 in regard to compensation of non-resident officers and directors.

Name and Address of officer	1. Social Security Number	2. Official Title	3. Time Devoted to Business	4. Percent of Corporation stock owned Common	5. Preferred	6. Amount of Compensation	7. Expense Account and Allowances
Schedule E Attached							
Total compensation of officers (enter here and on line 12, page 1)							

SCHEDULE F.—BAD DEBTS

1. Year	2. Trade notes and accounts receivable outstanding at end of year	3. Sales on account	Amount added to reserve: 4. Current year's provision	5. Recoveries	6. Amount charged against reserve	7. Reserve for bad debts at end of year
1966		Schedule F Attached				
1967						
1968						
1969						

SCHEDULE G.—DEPRECIATION

1. Description of property	2. Date Acquired	3. Cost or Other Basis (Exclude Land)	4. Depreciation Allowed (or allowable) in Prior Years	5. Method of Computation	6. Rate (%) or Life (years)	7. Depreciation This Year
Total additional first-year depreciation (do not include in items below)						
Schedule G Attached						

(Detail to substantiate the deduction claimed must be shown on attached schedule)

1 Total	
2 Less Amount of depreciation claimed in Schedule A and elsewhere on return	
3 Balance (enter here and on line 22, page 1)	

COMPUTATION OF NET IDAHO TAXABLE INCOME

31	Amount from line 30, page 1	59,284,442
	Idaho Adjustments	
	Add:	
	(a) Interest and dividends received, tax-exempt under I R C	672,635
	(b) State income taxes deducted on page 1 (measured by income)	1,009,695
	(c) Net operating loss deduction, line 29a, page 1	
	(d) Dividends received credit included in line 29b, page 1	35,124,376
	Subtract:	
	(e) Dividend received credit Idaho qualifying corporations (attach detailed schedule)	
	(f) Tax-exempt income (attach detailed schedule)	
	(g) 50% capital gain excess over capital loss Schedule H Attached	1,261,903
	(h) Non-business Income allocated to all states including Idaho (attach detailed schedule)	72,465,161
32	Net Business Income subject to apportionment (line 31 plus lines 31a, b, c and d, minus e, f, g and h)	22,364,079
33	Times Idaho apportionment factor—from line 48 below 1.8664 %	
34	Net Business Income apportioned to Idaho (Amount on line 32 multiplied by percentage on line 33)	417,403
35	(a) Add Non-business income allocated to Idaho (attach detailed schedule) Schedule H Attached	2,473
	(b) Deduct Idaho net operating loss carry-over (attach detailed schedule)	
36		
37	Net Taxable Income (Amount on line 34 plus or minus amounts on lines 35 and 36)	419,876

APPORTIONMENT FACTORS

		Total	Other States	Idaho	Idaho Percent of Total
38	Inventory (average)	162,190,788	161,658,659	532,129	
39	Depreciable property at cost (average)				
40	Land at cost (average)	327,576,169	319,408,571	8,167,598	
41	Rents capitalized	9,919,664	9,502,723	416,936	
42	Total real and tangible personal property	499,604,621	490,569,953	9,114,663	1.8241%
43	Sales and other apportionable gross receipts	350,743,590	350,671,661	71,929	.020%
44	Compensation of officers	1,344,130	1,344,130		
45	Other payroll	90,773,241	87,314,652	3,458,589	
46	Total payroll	92,117,371	88,658,782	3,458,589	3.7545%
47	Total percent				5.5991%
48	Idaho apportionment factor (Average Percent)			1.8664%	

Amount of Idaho taxable income (or loss) for: 1966 1,404,255* 1967 491,791* 1968 None

Has the Federal Government determined your income tax liability to be different from that reported for any year? (Other than adjustments for years covered by federal audit actions which were previously submitted to the State) No If the answer is "yes", state the year or years involved and disclose whether the change in liability was made as a result of a federal audit or a change reflected on an amended return

Have you filed Idaho Form 96 and accompanying Forms 20 (or Federal Forms 1099) Yes (X) No ( )

Principal business activity Mining, smelting, refining, manufacturing, buying and selling

Principal product or service metalliferous products

Corporation books are in care of H. Q. Stringham, Comptroller

Name and address of Manager or Agent in Idaho Norman Visnes, Wallace, Idaho

Locations of properties and businesses in Idaho Wallace, Idaho

*As per compromise settlement with Tax Commissioner, September 15, 1970.

SCHEDULE L.—BALANCE SHEETS. (SEE INSTRUCTIONS)

ASSETS	Beginning of Taxable Year (A) Amount	Beginning of Taxable Year (B) Total	End of Taxable Year (C) Amount	End of Taxable Year (D) Total
1. Cash				
2. Notes and accounts receivable				
(a) Less: Reserve for bad debts				
3. Inventories				
4. Investments in Government obligations				
5. Other current assets (Attach schedule)				
6. Loans to stockholders				
7. Other investments (Attach schedule)				
8. Buildings and other fixed depreciable assets				
(a) Less: Accumulated amortization and depreciation				
9. Depletable assets				
(a) Less: Accumulated depletion				
10. Land (net of any amortization)				
11. Intangible assets (amortizable only)	Schedule L Attached			
(a) Less: Accumulated amortization				
12. Other assets (Attach schedule)				
13. Total assets				
LIABILITIES AND CAPITAL				
14. Accounts payable				
15. Mortgages, notes, and bonds payable in less than 1 year				
16. Other current liabilities (Attach schedule)				
17. Loans from stockholders				
18. Mortgages, notes, and bonds payable in 1 year or more				
19. Other liabilities (Attach schedule)				
20. Capital stock: (a) Preferred stock				
(b) Common stock				
21. Paid or capital surplus (attach reconciliation)				
22. Surplus reserve (Attach schedule)				
23. Earned surplus and undivided profits				
24. Total liabilities and capital				

SCHEDULE M-1.—RECONCILIATION OF INCOME PER BOOKS WITH INCOME PER RETURN

1. Net income per books		7. Income recorded on books this year not included in this return (itemize)	
2. Federal income tax		Schedule M-1 Attached	
3. Excess of capital losses over capital gains			
4. Taxable income, not recorded on books this year (itemize)		8. Deductions in this tax return not charged against book income this year (itemize)	
5. Expenses recorded on books this year not deducted in this return (itemize)			
		9. Total of lines 7 and 8	
6. Total of lines 1 through 5		10. Income (line 28, page 1)—line 6 less 9	

SCHEDULE M-2.—ANALYSIS OF EARNED SURPLUS AND UNDIVIDED PROFITS PER BOOKS (LINE 23, PAGE 4)

1. Balance at beginning of year		5. Distributions (a) Cash	
2. Net income per books		(b) Stock	
3. Other increases (itemize)		(c) Property	
		6. Other decreases (itemize)	
		Schedule M-2 Attached	
		7. Total of lines 5 and 6	
4. Total of lines 1, 2 and 3		8. Balance end of year (line 4 less 7)	

1113

Form 41 — IDAHO CORPORATION INCOME TAX RETURN — 1970

Return with your remittance to State Tax Commission P. O. Box 36, Boise, Idaho 83707

or other taxable year beginning _____, 1970
and ending _____, 19__

IMPORTANT—All applicable lines and schedules must be filled in. If the lines on the schedules are not sufficient, see instructions

Please type or print

Name: AMERICAN SMELTING AND REFINING COMPANY

Number and Street: 120 BROADWAY

City or Town and State: NEW YORK, NEW YORK — ZIP Code No.: 10005

Federal Employer's No.: 13-4924440
Idaho Employer's Withholding No.: 14141-73-20-45 U
Kind of Business: Non ferrous metals
Federal Business Code No.: 3330
Incorporated in State of: New Jersey Year: 1899
Consolidated Return: Yes — See Statement A

If desired, attach copy of Federal Return (Form 1120) and copies of all supporting schedules, enter on Line 30 the corresponding amount from the Federal Return, and omit Lines 1 through 29.

GROSS INCOME	1 Gross receipts or gross sales 353,783,675 Less: Returns and allowances	5,158,605	348,625,070
	2 Less: Cost of goods sold (Schedule A) and/or operations (attach schedule)		125,673,006
	3 Gross profit		222,952,064
	4 Dividends (Schedule C)		64,762,970
	5 Interest on obligations of the United States and U. S. instrumentalities		2,239,199
	6 Other interest		4,682,474
	7 Gross rents		61,905
	8 Gross royalties		1,169,110
	9 Net gains (losses)—(attach Federal Schedule D)		46,400,591
	10 Other income (attach schedule) Schedule A-1 attached		4,102,760
	11 TOTAL income—Add lines 3 through 10		346,371,073
DEDUCTIONS	12 Compensation of officers (Schedule E)		1,351,020
	13 Salaries and wages (not deducted elsewhere)		
	14 Repairs (do not include capital expenditures)		28,974,859
	15 Bad debts (Schedule F if reserve method is used)		30,523
	16 Rents		1,041,517
	17 Taxes (Schedule B or other schedule)		17,073,387
	18 Interest		1,298,984
	19 Contributions (attach schedule—see instructions for limitation)		121,900
	20 Casualty or theft losses (attach schedule)		
	21 Amortization (attach schedule)		35,584
	22 Depreciation (Schedule G)		12,046,797
	23 Depletion (attach schedule)		13,094,690
	24 Advertising		1,062,904
	25 (a) Pension, profit-sharing, stock bonus, annuity plans (attach Federal Form 2050)		6,547,688
	(b) Other employee benefit plans (see instructions)		7,251,033
	26 Other deductions (attach schedule) Schedule K Attached		136,689,199
	27 TOTAL deductions on lines 12 through 26		226,620,085
	28 Taxable income before net operating loss deduction and special deductions (line 11 less line 27)		119,750,988
	29 Less: (a) Net operating loss deduction (see instructions—attach schedule)		
	(b) Special deductions (attach schedule)	20,004,677	20,004,677
	30 Federal taxable income (line 28 less line 29). Enter also on line 31, page 3		99,746,311

COMPUTATION OF TAX DUE OR REFUND

1. Net taxable income (line 37, page 3) $ 127,755 @ 6% — tax due	7,665.30
2. Permanent Building Fund Tax (Applies to all corporations except "Tax Option" Corporations)	$10.00
3 Credit for estimated tax paid	8,000.00
4 ~~Amount due~~ or Overpayment	(324.70)
5 Interest from Due Date @ 6% _____ Penalty if applicable _____	
6 TOTAL REMITTANCE	NONE

SIGNATURE AND VERIFICATION (See Instructions)

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete. If prepared by a person other than taxpayer, his declaration is based on all information of which he has any knowledge.

October 13, 1971 — (Date) — RJ Plumb,Jr. — (Signature of Officer) — Treasurer — (Title)

CORPORATE SEAL

(Date) — (Signature of Preparer — Individual or Firm) — (Address)

1138

File this return on or before the 15th day of the fourth month after the close of the taxable year.

SCHEDULE A.—COST OF GOODS SOLD

(Where inventories are an income-determining factor)

1 Inventory at beginning of year	
2 Merchandise bought for manufacture or sale	
3 Salaries and wages **Schedule A Attached**	
4 Other costs per books (Attach schedule)	
5 TOTAL	
6 Less: Inventory at end of year	
7 Cost of goods sold (enter here and on line 2, page 1)	

SCHEDULE B.—TAXES

Explanation	Amount
Schedule B Attached	
TOTAL (enter here and on line 17, page 1)	

SCHEDULE C.—INCOME FROM DIVIDENDS

1. Name of Declaring Corporation	2. Domestic Corporations Taxable Under Chapter 1, Internal Revenue Code*	3. Certain Preferred Stock of Public Utilities Taxable Under Chapter 1, Internal Rev. Code	4. Foreign Corporations	5. Other Corporations
Schedule C Attached				
TOTALS				

Total of columns 2, 3, 4, and 5 (enter here and on line 4, page 1)

*Except (a) dividends on certain preferred stock of public utilities, which should be entered in column 3, and (b) dividends, which should be entered in column 5, received from China Trade Act corporation, from corporations to which section 931 applies, and from corporations exempt from tax under sections 501 and 521, Internal Revenue Code

SCHEDULE D.—USE FEDERAL SCHEDULE D (FORM 1120)

SCHEDULE E.—COMPENSATION OF OFFICERS

See instructions for page 2 in regard to compensation of non-resident officers and directors.

Name and Address of officer	1. Social Security Number	2. Official Title	3. Time Devoted to Business	Percent of Corporation Stock Owned 4. Common	5. Preferred	6. Amount of Compensation	7. Expense Account and Allowances
Schedule E Attached							
Total compensation of officers (enter here and on line 12, page 1)							

SCHEDULE F.—BAD DEBTS

1. Year	2. Trade notes and accounts receivable outstanding at end of year	3. Sales on account	Amount added to reserve 4. Current year's provision	5. Recoveries	6. Amount charged against reserve	7. Reserve for bad debts at end of year
1967						
1968		**Schedule F Attached**				
1969						
1970						

SCHEDULE G.—DEPRECIATION

1. Description of property	2. Date Acquired	3. Cost or Other Basis (Exclude Land)	4. Depreciation Allowed (or allowable) in Prior Years	5. Method of Computation	6. Rate (%) or Life (years)	7. Depreciation This Year
Total additional first-year depreciation (do not include in items below) ▶						
Schedule G Attached						

(Detail to substantiate the deduction claimed must be shown on attached schedule)

1 Total	
2 Less Amount of depreciation claimed in Schedule A and elsewhere on return	
3 Balance (enter here and on line 22, page 1)	

COMPUTATION OF NET IDAHO TAXABLE INCOME

31 Amount from line 30, page 1		99,746,311
Idaho Adjustments		
Add:		
(a) Interest and dividends received, tax-exempt and [illegible] Code (measured by income)		111,023
(b) State income taxes deducted on page 1		1,032,701
(c) Net operating loss deduction, line 29a, page 1		20,004,677
(d) Dividends received credit included in line 29b, page 1		
(e) Salaries of non-resident officers not deductible		
(f)		
Subtract:		
(g) Dividends received credit: Idaho qualifying corporations (attach detailed schedule)		
(h) Tax-exempt income (attach detailed schedule)		23,200,296
(i) 50% capital gain excess over capital loss	Schedule H	90,666,299
(j) Nonbusiness Income allocated to all states including Idaho (attach detailed schedule)		
(k)		7,028,117
32 Net Business Income subject to apportionment (line 31 plus [illegible] b, c, d, e & f, minus g, h, i, j & k)		
33 Times Idaho apportionment factor—from line 59 below 1.8053 %		126,879
34 Net Business Income apportioned to Idaho (Amount on line 32 multiplied [illegible] Schedule H Attached		876
35 (a) Add Nonbusiness income allocated to Idaho (attach detailed schedule)		
(b) Deduct Idaho net operating loss carry-over (attach detailed schedule)		
36		127,755
37 Net Taxable Income (Amount on line 34 plus or minus amounts on lines 35 and 36)		

APPORTIONMENT FACTORS

	Total	Other States (Attach Schedule)	Idaho	Idaho Percent of Total
PROPERTY	194,620,198	194,082,543	537,653	
38 Inventory (average)				
39 Depreciable property at cost (average)	361,279,785	350,422,455	10,857,330	
40 Land at cost (average)				
41 Rents capitalized	7,968,992	7,720,000	248,992	
42 Total property	563,868,975	552,225,000	11,643,957	2.0650
SALES (Gross Receipts)				
43 Gross Sales, Less Returns and Allowances	351,510,387	351,333,267	177,120	
44 Dividends				
45 Interest on obligations of U.S.				
46 Other interest				
47 Gross rents received				
48 Gross royalties				
49 Net Gains (Losses) Schedule D				
50 Other income				
51 Total Income				
PAYROLL				
52 Compensation of officers	1,351,020	1,351,020		
53 From line 13, page 1				
54 From schedule A, line 3				
55 Included in line 14, page 1				
56 Other wages and salaries	96,761,221	93,523,147	3,238,074	
57 Total payroll	98,112,241	94,874,167	3,238,074	3.3004
58 Total percent				5.4159
59 Idaho apportionment factor (Average Percent)				1.8053

Has the Federal Government determined your income tax liability to be different from that reported for any year? Yes ( ) No (X)
If the answer is yes, submit under separate cover any Revenue Agent's Reports and schedules or copies thereof, showing final determination of any deficiency or over-assessment in Federal Tax not previously submitted.

Have you filed Idaho Form [illegible] and corresponding Forms 20 (or Federal Forms 1099) Yes (X) No ( )
Principal business activity mining, smelting, refining, mfg., buying & selling Principal product or service metalliferous products and coal.
Corporation books and records are in care of W.O. Springham Name and address of Manager or Agent in Idaho F.D. Owsley, Wallace, Idaho
Locations of properties and businesses in Idaho Wallace, Idaho

491,791*	NONE	419,876	

Amount of Idaho taxable income (or loss) for 1963 1965 1966

*Per Compromise Settlement with Tax Commission - September 15, 1970.

SCHEDULE L.—BALANCE SHEETS. (SEE INSTRUCTIONS)

ASSETS	Beginning of Taxable Year (A) Amount	Beginning of Taxable Year (B) Total	End of Taxable Year (C) Amount	End of Taxable Year (D) Total
1. Cash				
2. Notes and accounts receivable				
(a) Less: Reserve for bad debts				
3. Inventories				
4. Investments in Government obligations				
5. Other current assets (Attach schedule)				
6. Loans to stockholders				
7. Other investments (Attach schedule)				
8. Buildings and other fixed depreciable assets				
(a) Less Accumulated amortization and depreciation				
9. Depletable assets				
(a) Less Accumulated depletion				
10. Land (net of any amortization)				
11. Intangible assets (amortizable only)				
(a) Less: Accumulated amortization		SCHEDULE L ATTACHED		
12. Other assets (Attach schedule)				
13. Total assets				
LIABILITIES AND CAPITAL				
14. Accounts payable				
15. Mortgages, notes, and bonds payable in less than 1 year				
16. Other current liabilities (Attach schedule)				
17. Loans from stockholders				
18. Mortgages, notes, and bonds payable in 1 year or more				
19. Other liabilities (Attach schedule)				
20. Capital stock: (a) Preferred stock				
(b) Common stock				
21. Paid or capital surplus (attach reconciliation)				
22. Surplus reserve (Attach schedule)				
23. Earned surplus and undivided profits				
24. Total liabilities and capital				

SCHEDULE M-1.—RECONCILIATION OF INCOME PER BOOKS WITH INCOME PER RETURN

1. Net income per books		7. Income recorded on books this year not included in this return (itemize)	
2. Federal income tax			
3. Excess of capital losses over capital gains			
4. Taxable income, not recorded on books this year (itemize)		8. Deductions in this tax return not charged against book income this year (itemize)	
5. Expenses recorded on books this year not deducted in this return (itemize)		SCHEDULE M-1 ATTACHED	
		9. Total of lines 7 and 8	
6. Total of lines 1 through 5		10. Income (line 28, page 1) line 6 less line 9	

SCHEDULE M-2.—ANALYSIS OF EARNED SURPLUS AND UNDIVIDED PROFITS PER BOOKS (LINE 23, PAGE 4)

1. Balance at beginning of year		5. Distributions: (a) Cash	
2. Net income per books		(b) Stock	
3. Other increases (itemize)		(c) Property	
		6. Other decreases (itemize)	
		SCHEDULE M-2 ATTACHED	
		7. Total of lines 5 and 6	
4. Total of lines 1, 2 and 3		8. Balance end of year (line 4 less 7)	

TRANSCRIPT OF PROCEEDINGS IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF IDAHO
Case No. 53182

[p. 5]

* * * * * * * * * *

DIRECT EXAMINATION

BY MR. PETERSON:

Q. Would you state your name for the record, Mr. Stringham?

A. Homer Q. Stringham.

* * * * * * * * * *

Q. Your employment?

A. Vice-President and Comptroller, American Smelting and Refining Company.

* * * * * * * * * *

[p. 55] Q. (By Mr. Petersen) Now, Mr. Stringham, let's turn to Southern Peru. Where does it operate?

A. Southern Peru operates in Peru.

Q. And it is I believe 51.5% of the stock in that corporation is owned by ASARCO?

A. Yes.

Q. This is a majority of the stock. Does ASARCO control Southern Peru in any sense of that term?

A. No.

Q. Now, why not?

A. The by-laws of the company are structured to prevent this by specifying that ASARCO is entitled to elect six directors and each of the other shareholders, the other three are authorized to elect two each making a total of 12 directors. These 12 directors in turn select a 13th director. These by-laws also provide that eight votes are required to pass any resolution.

Q. That means then that ASARCO which has six directors would have to get the concurrence of two other di-

rectors to [p. 56] effectively pass any decision or make any decision?

A. Yes.

Q. Is the executive—they have an executive committee do they not?

A. Yes, there is an executive committee of the Board which is constituted and functions in exactly the same manner.

Q. It's structured with the same pattern?

A. Right.

Q. So that ASARCO cannot control the acts of the executive committee either?

A. That is right. It also needs one other shareholder.

Q. Now, can the Articles and By-Laws of the corporation be changed?

A. Only by the unanimous consent of all parties, all the shareholders. The stock certificates are actually engraved with this restriction thereon.

Q. Essentially then this is the result of a contractual agreement between ASARCO and three other shareholders of the corporation, is that correct?

A. That is correct.

Q. And it would require unanimous agreement of the two other parties to the contract to get any changes made?

A. Correct.

Q. Does Southern Peru have employees?

A. Yes.

[p. 57] Q. A great number?

A. Yes.

Q. And does it have its staff?

A. Yes.

Q. That staff that you'd expect a major company to have?

A. Yes.

Q. What does Southern Peru do?
A. Southern Peru mines, mills and smelts copper bearing materials in Peru.

Q. What is the product which is produced by this process?
A. It produces blister copper.

Q. Blister copper.
A. From its smelter.

Q. Is blister copper a commercial product?
A. Yes.

Q. Does ASARCO render any services to Southern Peru?
A. Yes.

Q. What are those services?
A. ASARCO has a contract or has contracts with Southern Peru to provide purchasing service outside of Peru, traffic service for their exports and imports outside of Peru, and for their tax work outside of Peru.

Q. Preparation of the United States Tax Return?
A. Yes, sir.

[p. 58] Q. Does Southern Peru have its own purchasing department?
A. In Peru.

Q. Does it have its own Tax Department?
A. In Peru.

Q. Does it have its own Traffic Department?
A. In Peru.

Q. Is ASARCO paid for the services it renders?
A. Yes.

Q. And can you describe to the court the agreement for payment for purchasing that is done by ASARCO? By the

way, this purchasing maybe channeled by ASARCO to ASARCO Mercantile, is that correct?

A. That is correct.

Q. Could you describe to the court then the contract for purchasing?

A. The purchasing contract provides payment for this service on the basis of a fixed fee plus a commission or percentage based on the amount of dollar volume of purchases.

Q. And what about the tax services?

A. That is negotiated fair fee for the work done.

Q. In other words, it is fixed fee fair value, is that correct?

A. It is a negotiated fixed fee, negotiated annually.

Q. And what about the compensation for traffic?

A. The same. The same as the tax fee, that is a fixed negotiated fee.

[p. 59] Q. You mean the same type of a fee?

A. The same type of fee, yes.

Q. It is a separate fee?

A. A seperate fee and in a different amount, yes.

Q. Does Southern Peru use any trade names or trade marks of ASARCO?

A. No.

Q. Does it identify itself with ASARCO in any way?

A. No.

Q. Does Southern Peru management seek direction or approval from ASARCO on major decisions?

A. No.

Q. Now, Southern Peru makes no purchases from ASARCO from the stipulation, but ASARCO makes substantial purchases from Southern Peru, can you explain why?

A. Southern Peru is contracted for the sale of its blister copper production to customers in Europe and with the shareholding company.

Q. Now, you have a long term output contract with Southern Peru, is that correct?

A. That is correct.

Q. And that is a contractual agreement?

A. Right.

Q. How is the price established?

A. It's based on a published quotation specified in the [p. 60] contract.

Q. Do you happen to know what that is?

A. Yes. That is the Average Metals Week Atlantic Seaboard Quotation as published in Metals Week. That is a trade publication.

Q. Can you explain what that quotation is; how does the magazine make the quotation?

A. This trade publication collects statistics and prices from the industry and publishes them. These average prices are based on reported sales by the various companies selling copper. The trade paper computes the averages and publishes them.

Q. Then all of the producers and sellers of copper will furnish the information on sales to this magazine. Is that confidential or what?

A. Perhaps not all of them, but most of the substantial ones, and enough of them to make this representative. And this information is handled confidentially by the publication so that no individual knows the components of the computation or the data fed in there.

Q. And therefore what is published is the average price paid by buyers to sellers during the period?

A. Right.

Q. And that is the quotation to which you are making reference?

[p. 61] A. That is the quotation specified in the contract, yes.

Q. And therefore the selling price for the blister copper will be determined—what is it, month by month or week by week? How often is that quotation published?

A. Well, the trade publication is published weekly, but it will have weekly averages, monthly averages. I'm not sure, but I think the Southern Peru contract is based on a monthly average.

Q. It is a monthly average isn't it?

A. I think so.

Q. And therefore the parties have no control over this price?

A. No.

Q. It's determined by the figures that appear in the trade publication?

A. Right.

Q. And does ASARCO have output contracts with other companies in which it has no interest?

A. Oh, yes.

Q. A great many of these?

A. Many, yes.

Q. Is the same method used to establish price on other contracts?

A. With a few rare exceptions where spot price might be used, the vast majority are all based average quotations or average market quotations published some place.

[p. 62] Q. And these are your long term output contracts with companies in which you have no interest?

A. That is right.

Q. And is the same price, and I say the same price, I mean this Average Metals Weekly Atlantic Seaboard Quotation Price used in other contracts——

A. Yes, sir.

Q. That is output contracts?

A. Yes, sir. The same as used in other contracts, yes.

Q. Companies in which ASARCO has no interest?

A. That is right.

Q. The same price?

A. The same average.

Q. Right.

A. The same average price.

Q. And ASARCO generally uses this method in pricing their output contracts?

A. That is right.

Q. Is this method used or is it common in the industry?

A. No.

Q. ASARCO is one of the few companies that uses it?

A. This is used primarily because ASARCO is a custom smelter and is buying material from outside its mines and its own mines.

Q. So essentially ASARCO is one of—maybe the only [p. 63] company that uses this pricing method?

A. No, not the only one.

Q. Some others?

A. Any company buying material from mines, and there are other companies which do this, would use this same—generally use this same technique.

Q. Is Southern Peru integral to ASARCO?

A. No.

Q. Is Southern Peru necessary to ASARCO?

A. No.

Q. Is the output contract necessary? Is it important?
A. It is important. It is not necessary.

Q. If you lost the output contract could it be replaced?
A. Probably.

Q. Within a short time?
A. Yes.

Q. Isn't it a fact that because of your custom smelting position you would likely get that blister copper in any event?
A. It is likely, yes.

Q. Whether you had any output contract with Southern Peru or not?
A. Right.

Q. It would come to you because of your position as a custom smelter?
A. Right.

[p. 64] Q. What would happen if ASARCO lost its investment in Southern Peru?
A. Well, it would lose the dividends from the company.

Q. It wouldn't lose the output contract?
A. No.

Q. Did ASARCO operate independently?
A. You mean——

Q. Did—I'm sorry, Your Honor. Did Southern Peru operate independently?
A. Yes.

• • • • • • • • • • •

[p. 65] Q. Let's turn now, Mr. Stringham, to ASARCO Mexicana. That corporation is 49% owned by ASARCO, is that correct?
A. That is correct.

Q. And where does it operate?
A. In Mexico.

Q. How is the rest of the stock of ASARCO Mexicana held?
A. The rest of the stock is held by Mexican Nationals.

Q. Is it publicly held?
A. Yes.

Q. What is the stock structure? The stock structure, if I'm not mistaken, ASARCO has Class B stock, the Nationals have Class A stock and that is publicly held.
A. Right.

Q. And the Class B stock represents 49% of the interest in ASARCO Mexicana?
A. That is right. Class A can only be held by Mexicana Nationals.

Q. Now, does ASARCO Mexicana use any trade marks or trade names of ASARCO?
A. Yes.

[p. 66] Q. As a matter of fact ASARCO is in the name of the corporation?
A. Right.

Q. And that's the trade name, is it not?
A. Right.

Q. Is that because at one time ASARCO owned a 100% of this company?
A. That is correct.

Q. And you had to divest yourself of that ownership, the 100%?
A. 51%.

Q. Right. And that happened a long time ago, '65 or——
A. '65 I believe it was.

Q. And the reason for that or I suppose the divestiture was in fact the effect of the tax and land laws in Mexico, is that not true?

A. That is right.

Q. And so ASARCO was essentially compelled to divest itself of this ownership?

A. Right.

Q. Does ASARCO perform any services for ASARCO Mexicana.

A. Yes.

Q. And is paid to charge for this service?

A. It is.

Q. Does management of ASARCO Mexicana seek direction or [p. 67] approval from ASARCO on major decisions?

A. No.

Q. Is ASARCO Mexicana an integral part of ASARCO?

A. No.

Q. Is this company necessary to ASARCO?

A. No.

Q. What would the effect of loss of the company be?

A. Loss of dividend income.

Q. Now, I notice in the stipulation, and this is on the second page of this stipulation, that ASARCO—no, it's not the second page—it's back further in I guess Chart C, D and E, I notice that ASARCO Mexicana though it makes no purchases or that ASARCO makes no purchases from ASARCO Mexicana that ASARCO does act as a commission agent for United States sales, is that correct?

A. That's what the chart says as I recall it, yes.

Q. And is that true?

A. In part. ASARCO does make direct purchases of—some direct purchases from ASARCO Mexicana in addition to acting as sales agent.

Q. I think there are a couple of corrections of that type that we will add, Mr. Stringham. There is an oversight there. There are some spot sales of concentrates that were made during that period, is that right?

A. That is right.

[p. 68] Q. But you do have a purchase contract with ASARCO by which you are paid commissions for purchases made by ASARCO Mexicana in the United States?

A. Will you repeat that question?

Q. You do have a contract with ASARCO Mexicana by which you make sales of what, metals?

A. Lead and zinc.

Q. Lead and zinc for ASARCO in the United States?

A. For ASARCO Mex.

Q. Sorry, I do get those . . . For ASARCO Mexicana in the United States, is that correct?

A. Yes, and abroad.

Q. And abroad. And ASARCO is paid a commission by ASARCO Mexicana for making those sales, is that correct?

A. That is correct.

Q. And that is pursuant to contract?

A. Yes, formal contract.

Q. So that contract would continue even though you lost your investment in ASARCO Mexicana?

A. Right. Now, also the purchase contract or some products which we buy directly.

Q. Did ASARCO Mexicana operate independently?

A. Yes.

Q. Is ASARCO Mexicana an integral to ASARCO?

A. No.

[p. 69] Q. Is it necessary to ASARCO?

A. No.

Q. Does ASARCO Mexicana management seek direction or approval from ASARCO on major decisions?

A. No.

Q. Now I might, again, simply in the sake of simplicity mention that Mexicana de Cobre is a corporation owned by ASARCO Mexicana, is that not correct? Or was a corporation owned by——

A. Yes, it is partially owned.

Q. 49%, was owned by ASARCO Mexicana——

A. Right.

Q. ——the rest of it was publicly held?

A. Public and also I think the government had an interest.

Q. So that essentially, whatever part of it this applied to, that part was owned by ASARCO Mexicana?

A. Right.

Q. Now, let's go to M.I.M. Holding, Mount Isa. Where does it operate?

A. In Australia and England.

Q. And ASARCO owns 52% of that company?

A. Right.

Q. ASARCO has no officers or directors of M.I.M. and yet it has a majority of the stock, why is that so?

[p. 70] A. This company has been very successful in staffing the corporation with Australian people and it's been able to run this company by themselves and, therefore, in consequence of the nationalistic feeling which developes in most of such developing countries we have not exercised any right we might have to elect a director to to the board of the company.

Q. This investment in that sense needs no stewardship from ASARCO, is that correct?

A. That is right.

Q. And it's in the best interest of ASARCO in that sense to keep away from and ignore the company?

A. Right.

Q. How is the rest of the stock of M.I.M. Holdings held?

A. It is widely held mostly in Great Britain, United States and Australia.

Q. This is a major corporation with a large staff and many employees?

A. That is right.

Q. Hundreds of employees?

A. Thousands.

Q. Thousands of employees. I notice there are practically no purchases by or from ASARCO?

A. That is right.

Q. Does M.I.M. use any ASARCO trade names or trade marks?

A. No.

[p. 71] Q. Does it identify itself with ASARCO in any way?

A. No.

Q. Does it use any ASARCO patents?

A. Yes.

Q. And that's a furnace patent?

A. It's a melting furnace patent.

Q. And does it pay for this?

A. Yes.

Q. And the price that is paid for this patent the same that would be paid by any other company using it?

A. That is right.

Q. In fact ASARCO has about a million dollars a year in royalties from patents if I remember correctly?

A. That is right.

Q. And the amounts of royalties that are paid by M.I.M. are set out in the stipulation, Your Honor. I think there is $30,000.00 a year or something like that.

Does ASARCO render any services to M.I.M.?
A. Occasionally.

Q. What kind of services?
A. It would be requests from Mount Isa for technical services of an engineer or assistant man or something like that.

Q. Do they pay for this?
A. Yes.

Q. But there isn't any contract?
[p. 72] A. No.

Q. Essentially then M.I.M. pays for any services that it requests. These requests are on a call basis?
A. Right.

Q. There is no legal commitment to supply them?
A. No.

Q. Does M.I.M. seek approval or direction from ASARCO in making major decisions?
A. No.

Q. Is M.I.M. an integral part of ASARCO?
A. No.

Q. Is M.I.M. necessary to ASARCO?
A. No.

Q. And what would the effect of loss of M.I.M. be upon ASARCO?
A. Loss of the dividend income.

Q. Did it operate independently?
A. Yes, sir.

Q. What does ASARCO—what does M.I.M. do Mr. Stringham, what is its operation?

A. M.I.M. operates a mine in Queen Land's Australia. This is a lead-zinc, ore and copper ore which is smelted in a copper smelter and a lead smelter at the mine site. It also produces at mine site zinc concentrates which are sold in that form. The copper blister from the smelter is refined at their [p. 73] refinery at Townsville, Australia in Queens Land. The lead bullion is refined at their lead refinery near London, England.

Q. So that essentially M.I.M. is involved in mining and smelting and refining?
A. Right.

Q. Now, I'd like to turn to General Cable and Revere Copper, and I think we put the two of these companies together for this purpose.
A. Right.

Q. They both operate in the United States?
A. Yes.

Q. And ASARCO has approximately 34% ownership in each of these?
A. Right.

Q. How is the rest of the stock held?
A. It is widely held.

Q. Sold on the——
A. Yes,——

Q. ——exchange?
A. ——it is listed on the New York Stock Exchange, yes.

Q. And I suppose it has many employees and staff just as any major corporation would?
A. Right.

Q. ASARCO has no one on the Board of Directors and no one in management, is that correct?
[p. 74] A. That is right.

Q. Does General Cable or does Revere Copper use any trade marks or trade names of ASARCO?

A. I believe Revere has one minor——

Q. Well, now are you talking about trade marks?

A. Wait, wait, no. The answer to that question is no. I was thinking of patents.

Q. So that they don't use any trade marks or trade names?

A. That's correct, they do not.

Q. But you were going to say they have a patent?

A. I think Revere licenses one patent.

MR. PETERSEN: I think, Your Honor, that the stipulation recites that. There is about $4,000.00 a year in patent royalties that are paid.

Q. (By Mr. Petersen) Is that a fair price?

A. Oh, yes.

Q. Does either General Cable or Revere Copper identify themselves in any way with ASARCO——

A. No.

Q. ——in advertising?

A. No.

Q. Does ASARCO render any services to either of these companies?

A. One small service.

[p. 75] Q. What is that?

A. They use our Stock Transfer Department.

Q. And are they charged for that?

A. Oh, yes.

Q. Are either of these companies integral to ASARCO?

A. No.

Q. Are either of them necessary to ASARCO?

A. No .

Q. Does management of either of these corporations seek direction or approval from ASARCO on major decisions?

A. No.

Q. They do have or make significant purchases from ASARCO, is that not correct?

A. That is correct.

Q. And these purchases are listed in the stipulation, Your Honor.

Do these companies have other suppliers?

A. Oh, yes.

Q. ASARCO divested itself of Cable in 1970, didn't it?

A. Yes.

Q. Has there been any significant change in the sales pattern from that date, that is after 1970?

A. No.

Q. What would the effect of loss of either of these companies be upon ASARCO?

[p. 76] A. Loss of dividend income.

Q. You've already experienced that with Cable?

A. Yes.

Q. Did they operate independently?

A. Yes.

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SUPREME COURT OF THE UNITED STATES

No. 80-2015

ASARCO INCORPORATED, ETC., *Appellant*,

v.

IDAHO STATE TAX COMMISSION

Supreme Court No. 12198

APPEAL from the Supreme Court of Idaho.

The statement of jurisdiction in this case having been submitted and considered by the Court, in this case probable jurisdiction is noted. The case is set for oral argument in tandem with case No. 80-1745, *F. W. Woolworth Co.* v. *Taxation and Revenue Department of New Mexico.*

October 5, 1981